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In The
Supreme Court of the United States

JOHN GILBERT CONTE, FRANK FRANCIS COLACURCIO, JR., FRANK FRANCIS COLACURCIO, SR., AND MARSHA MARIE FURFARO,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

On Petition For Writ Of *Certiorari* To The Washington Supreme Court

PETITION FOR A WRIT OF *CERTIORARI*

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QUESTIONS PRESENTED

Does the decision of a state's highest court to remand a case for criminal prosecution constitute a final judgment under 28 U.S.C. § 1257(a), as construed by *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), when the constitutional question to be decided is whether the Petitioners were deprived of due process because the laws proscribing their conduct did not provide fair notice that criminal prosecution was possible?

Whether the remedies provision of a state's campaign finance law, which is entitled "Civil Remedies and Sanctions" and expressly provides only for civil remedies, but also contains a general reference to "any other remedies provided by law," provides fair notice as required by the Due Process Clause of the Fourteenth Amendment that individuals acting in violation of the statute may be subject to criminal prosecution and punishment?

PARTIES TO THE PROCEEDINGS BELOW

Petitioners John Gilbert Conte, Frank Francis Colacurcio, Jr., Frank Francis Colacurcio, Sr., and Marsha Marie Furfaro were defendants in the Washington Superior Court for the County of King, and respondents before the Washington Supreme Court. Respondent State of Washington was plaintiff in the superior court and appellant before the Washington Supreme Court.

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PETITION FOR WRIT OF *CERTIORARI*

Petitioners John Gilbert Conte, Frank Francis Colacurico, Jr., Frank Francis Colacurico, Sr., and Marsha Marie Furfaro ("Petitioners") respectfully petition for a writ of *certiorari* to the Washington Supreme Court in *State v. Conte, et al.*, No. 78995-9.

OPINIONS BELOW

The opinion of the Washington Supreme Court is published at 159 Wash.2d 797, 154 P.3d 194 (Wash. 2007), and is attached at App. at 1-28. The Washington Supreme Court's order denying Petitioners' motion for reconsideration, filed June 11, 2007, is unpublished, and is attached at App. at 58. The relevant trial court order is unpublished, and is attached at App. at 47-49.

STATEMENT OF JURISDICTION

The opinion of the Washington Supreme Court was filed March 15, 2007. App. 1. The Washington Supreme Court denied Petitioner's motion for reconsideration on June 11, 2007. App. at 58. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a), as construed by *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: " . . . nor shall any

State deprive any person of life, liberty, or property, without due process of law. . . ."

STATEMENT OF THE CASE

This case comes to the Court from the Supreme Court of Washington, which overturned a trial court decision dismissing criminal charges against Petitioners. The trial court's dismissal was based on state law grounds. The Washington Supreme Court not only reversed the trial court on the state law grounds, but also rejected Petitioners' federal constitutional argument that the statutes proscribing their conduct, which expressly limited the State to seeking civil remedies, failed to provide constitutionally adequate notice that they could be subjected to criminal prosecution and punishment. Reversing the trial court's order of dismissal, the State Supreme Court remanded the case for trial.

This case presents important issues of both federal jurisdiction and constitutional law. It affords an opportunity to provide guidance on the scope of the "federal policy" criterion used to determine whether a judgment of a state's highest court remanding a case for trial, constitutes a final judgment under *Cox*'s fourth exception. That exception permits review of cases in which "a refusal immediately to review the state-court decision might seriously erode federal policy," even though further proceedings have been ordered in the state's lower courts. *Cox*, 420 U.S. at 483.

This case also presents the question whether Washington's novel theory of prosecution, which "criminalized" conduct that was expressly proscribed by statutes

providing only for civil sanctions, runs afoul of the fair notice doctrine enshrined in the Fourteenth Amendment's Due Process Clause.

1. Specific state and municipal civil laws govern campaign finance and disclosure.

Both the State of Washington and City of Seattle regulate individuals' campaign contributions to candidates for elective office. State statutes and local ordinances limit the amount of campaign contributions individuals may make to candidates, Wash. Rev. Code §§ 42.17.610 *et seq.* (1993); Seattle Municipal Code ("SMC") § 2.04.370(D) (2002);[1] require candidates to publicly disclose contributions received, Wash. Rev. Code § 42.17.080 (1989) (amended 2006); SMC §§ 2.04.150 *et seq.* (1991); and prohibit acts by individuals designed to conceal the original source of campaign contributions and subvert public disclosure, including the act of reimbursing others for making contributions to candidates. Wash. Rev. Code §§ 42.17.120 (1975),[2] and 42.17.780 (1995);[3] SMC § 2.04.290(A) (2002).[4]

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[1] *E.g.*, SMC § 2.04.370(D) provides, in relevant part: "No candidate for . . . member of the City Council . . . shall solicit or receive campaign contributions of more than Six Hundred Dollars ($600) from any person in an election cycle. . . ."

[2] Wash. Rev. Code § 42.17.120 provides, in relevant part: "No contribution shall be made . . . by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in an other manner so as to effect concealment."

[3] Wash. Rev. Code § 42.17.780 provides, in relevant part: "A person may not, directly or indirectly, reimburse another person for a contribution to a candidate. . . ."

[4] SMC § 2.04.290(A) provides, in relevant part: "No contribution shall be made and no expenditure shall be incurred, directly or

(Continued on following page)

The municipal campaign finance disclosure law subjects violators to civil penalties and expressly excludes the possibility of criminal prosecution for violations. SMC § 2.04.500(B) (1997) provides, in relevant part: "Whether or not there is an administrative determination as provided in Section A, the violation or failure to comply with the provisions of Sections 2.04.160 through 2.04.290 (regarding campaign reporting), [or] Section 2.04.370 (regarding contribution limitations) . . . *shall constitute an infraction, not subject to the Seattle Criminal Code. . . .* " (emphasis added). The state campaign finance disclosure law also sets forth civil remedies and sanctions to be imposed for violations. Wash. Rev. Code § 42.17.390 (1993) (amended 2006). Wash. Rev. Code § 42.17.390 is entitled "Civil Remedies and Sanctions." It provides, in relevant part: "One or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law: . . . . "

2. Washington's bait and switch.

In 2005, Washington accused Petitioners of engaging in "political money laundering" to improperly influence the 2003 Seattle City Council elections. For purposes of the federal question this Court is asked to review, the factual allegations against all four Petitioners are identical. The state alleges the Petitioners reimbursed some individuals in cash for contributions those individuals made to three then Seattle City Council members seeking reelection in 2003. App. at 4. The state's novel theory further asserts

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indirectly, . . . by one person through an agent, relative, or other person in such a manner as to conceal the identification of the source of the contribution or in any other manner so as to effect concealment."

that the Petitioners' alleged reimbursement of campaign contributions, caused the three candidates to file false campaign disclosure reports in violation of Wash. Rev. Code § 40.16.030, which makes the offering of a false instrument for filing a class C felony. App. at 6. The false instrument law is a general criminal statute enacted in 1909. It provides:

> Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

Wash. Rev. Code § 40.16.030. This general criminal statute has never in the history of the state been used to impose criminal penalties for conduct similar to Petitioners' alleged acts. The Information charged Petitioners in various counts based upon each Petitioner's alleged reimbursement of campaign contributions with causing the various campaigns' treasurers to file false campaign disclosure reports. App. at 4. Each Petitioner pleaded not guilty.

The trial court granted Petitioners' motion to dismiss on statutory interpretation grounds, ruling that the state's campaign finance disclosure laws (Wash. Rev. Code ch. 42.17), not the state's false instrument law (Wash. Rev. Code § 40.16.030), governed Petitioners' alleged actions. As the campaign finance disclosure law only provides for imposition of civil remedies and sanctions, the trial court

dismissed the criminal charges. App. at 29-56. Because the trial court granted Petitioner's motion on statutory grounds, it did not reach Petitioners' due process argument. App. at 49. The state appealed, and the Washington Supreme Court accepted certification of the case from the Washington Court of Appeals. App. at 5.

On appeal, Petitioners argued that if the trial court was reversed on statutory interpretation grounds, then the Washington Supreme Court could and should uphold the dismissal on the due process grounds raised but not reached in the trial court. App. at 21. In its reply, the state asked the Washington Supreme Court to "consider [Petitioners'] due process claim *only under federal constitutional law*" because the Petitioners did not provide the analysis required by *State v. Gunwall*, 106 Wash. 2d 54 (1986), for consideration of an independent state constitutional law claim. *State v. Conte, et al.*, No. 78995-9, Appellant's Reply Brief at 12 (emphasis added) (citing *State v. Sullivan*, 143 Wash. 2d 162, 180 n.73 (2001)).

The Washington Supreme Court reversed the trial court. It first addressed the statutory issue and construed the phrase "any other remedies provided by law," in Wash. Rev. Code § 42.17.390, to include criminal punishment. App. at 13. Accordingly, it reversed the trial court's order of dismissal on this statutory interpretation ground.

Next the Washington Supreme Court turned to the due process issue raised but not reached in the trial court. The court held it would "only consider [the Petitioners'] due process claim under federal constitutional law." App. at 21 (citing *Sullivan*, 143 Wash. 2d at 180 n.73). Considering the Petitioners' due process claim under federal constitutional analysis, App. at 21, the Washington Supreme

Court rejected Petitioners' argument that they would be deprived of their due process rights to fair notice if the state was allowed to proceed with criminal prosecutions against them based upon allegations they reimbursed others for campaign contributions made to Seattle City Counsel members seeking reelection. App. at 21-22. The Washington Supreme Court reversed the trial court and reinstated the charges against the Petitioners and remanded the case to the trial court for further proceedings. App. at 22.

Petitioners seek review of the Washington Supreme Court's decision denying their claim that they will be deprived of due process guaranteed by the Fourteenth Amendment if the state is allowed to proceed with prosecutions where the state legislature failed to put them on fair notice that their alleged actions subjected them to criminal punishment.

REASONS FOR GRANTING THE WRIT

1. This case is an opportunity for the Court to clarify the fourth *Cox* exception's "federal policy" criterion.

Under 28 U.S.C. § 1257(a), this Court has *certiorari* jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution . . . of . . . the United States." Generally, to be "final" for purposes of this Court's *certiorari* jurisdiction, the state-court judgment must be "'an effective determination of the litigation and not merely interlocutory or intermediate

steps therein.'" *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997) (quoting *Market Street R. Co. v. Railroad Comm'n of Cal.*, 324 U.S. 548, 551 (1945)). "Applied in the context of a criminal prosecution, finality is normally defined by the imposition of the sentence." *Flynt v. Ohio*, 451 U.S. 619, 620 (1981).

However, this Court "has interpreted the [jurisdictional] statute's phrase 'final judgment' to refer, in certain circumstances, to a state court's final determination of a federal issue, even if the determination of that issue occurs in the midst of ongoing litigation." *Nike, Inc. v. Kasky*, 539 U.S. 654, 671 (2003) (Bryer, J., dissenting). This Court has treated four categories of state-court rulings, in which further proceedings were to take place in the state courts, as falling within the jurisdictional statute's meaning of "final judgment or decree." The four categories are outlined in *Cox*, 420 U.S. at 477-483. Petitioners invoke this Court's jurisdiction under *Cox*'s fourth category of cases. *Id.* at 482-483.

The cases that fall within *Cox*'s fourth exception to the general finality rule were described as follows:

> [T]hose situations where [1] the federal issue has been finally decided in the state courts with further proceedings pending in which [2] the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and [3] where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come. In these circumstances, [4] if a refusal immediately to

> review the state-court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally decided by the state courts for purposes of the state litigation. *Id.* at 482-483.

The Washington Supreme Court's opinion below meets the first three criteria for application of *Cox*'s fourth category. The state court "finally decided" the federal issue by rejecting Petitioners' argument that the campaign finance disclosure law's general reference to other laws did not provide them with fair notice that their alleged conduct would subject them to criminal liability. App. at 21-22. According to the Washington Supreme Court, nothing remains to be decided with respect to whether the state's campaign finance disclosure law is repugnant to Petitioners' due process rights under the Fourteenth Amendment. Additionally, "the part[ies] seeking review here," Petitioners, "might prevail on the merits on nonfederal grounds." *Cox*, 420 U.S. at 482. Petitioners deny reimbursing others for contributions made to candidates for Seattle City Council. If the state is unable to prove the alleged conduct beyond a reasonable doubt at trial, Petitioners will "prevail on the merits on nonfederal grounds." *Id.* Finally, "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action." *Id.* at 482-483. If this Court held the state campaign finance disclosure law failed to provide Petitioners with fair notice that their alleged conduct could subject them to criminal liability, and accordingly reversed the Washington Supreme Court's decision on federal due process grounds, the state would be precluded from pursuing criminal prosecution in further proceedings.

A. The "federal policy" criterion of the fourth *Cox* category needs clarification.

At issue is whether there is a federal policy that may be eroded by delaying review of the state court opinion below. However, to answer this question the scope of the "federal policy" criterion needs to be clarified.

In *Johnson v. California*, 541 U.S. 428 (2004) (*per curiam*), the Court directed the bar to "assure themselves that the decision for which review is sought is indeed a "[f]inal judgmen[t]" under § 1257." *Id.* at 432 (holding the fourth *Cox* category does not apply and dismissing the case for want of jurisdiction). Yet, the Court has not articulated the scope of the federal policy criterion, leaving counsel without necessary guidance to determine whether a particular decision is "indeed a "[f]inal judgment[t]" under § 1257." *Id.* Nor has the Court set forth a standard that counsel could apply to determine whether the federal policy criterion is met. Thus, counsel are left without the tools necessary to comply with the Court's direction to "assure themselves" that the decisions for which they seek review are final judgments under § 1257. Instead, counsel must speculate which federal policies a majority of the Justices might be interested in protecting by immediate review,[5] to invoke the Court's jurisdiction under § 1257, as construed by *Cox*.

Cox did not articulate with clarity the scope of its federal policy criterion, and it did not set forth a standard

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[5] While the vote of only four Justices is necessary for the Court to exercise its discretion to entertain a petition for *certiorari*, a vote of a majority of Justices is necessary to find jurisdiction or the writ of *certiorari* will be dismissed as improvidently granted.

to be applied to determine in the future which federal policies deserve the Court's immediate review. And the opinions in which jurisdiction has depended upon application of *Cox*'s fourth exception, whether by the Court as a whole or by individual Justices, in the over three decades since *Cox* was decided, have not clarified the category of federal policies that deserve the Court's immediate review. Nor have the opinions that have followed *Cox* articulated a standard to be applied to determine whether a particular federal policy at issue warrants invocation of the Court's jurisdiction for immediate review.

While the Court has recognized the importance of clarity in matters of jurisdiction, *see United States v. Sisson*, 399 U.S. 267, 307 (1970), and the waste of great energy by the courts and the parties "not on the merits of dispute settlement, but on simply deciding whether a court has the power to hear a case," *id.*, in the absence of such clarity, the efficiency justification for finality, *see Pennsylvania v. Ritchie*, 480 U.S. 39, 49, n.7 (1987), will continue to be undermined until the Court gives the bar guidance as to the scope of the federal policy criterion under the fourth *Cox* exception.

B. *Cox* failed to clarify the scope of the "federal policy" criterion or to provide a standard to be applied.

As then Associate Justice Rehnquist noted in his dissent, *Cox*'s fourth category is a "virtually formless exception to the finality requirement." *Cox*, 420 U.S. at 505 (Rehnquist, J., dissenting). *Cox* discussed three prior cases as examples of the cases that fall within its fourth category. The first case *Cox* discussed is *Construction Laborers v. Curry*, 371 U.S. 542 (1963). *Cox*, 420 U.S. at 483. In

Curry, the state courts rejected labor union claims that the National Labor Relations Board had exclusive jurisdiction over the controversy and temporarily enjoined the labor union's picketing. The Court recognized a federal policy, based upon federal labor statutes, that gave the National Labor Relations Board, not state courts, jurisdiction over the controversy. *Curry*, 371 U.S. at 550. The Court was also convinced that the case was concluded in the state courts for all practical purposes. Given the practical posture of the case and to protect the recognized federal labor policy, the Court took jurisdiction. No explanation was given as to how the federal labor policy would be eroded if review were delayed until after the conclusion of all state court proceedings. Rather, it appears the mere violation of the federal labor statute (state court assertion of jurisdiction over a controversy in which exclusive jurisdiction rested with the National Labor Relations Board) was sufficient erosion to warrant the Court's immediate review.

The second case *Cox* discussed is *Mercantile National Bank v. Langdeau*, 371 U.S. 555 (1963). *Cox*, 420 U.S. at 483-484. In *Langdeau*, two national banks asserted a federal venue statute immunized them from suit on claims of conspiracy to defraud an insurance company in the courts of the county in which they were sued. In asserting jurisdiction, the Court recognized it would serve the policy of the federal venue statute to immediately decide the issue of which state courts the banks could be sued instead of delaying such a decision until the conclusion of the state court proceedings. *Langdeau*, 371 U.S. at 558. Judicial efficiency and fairness principles appear to provide the underlying support for the immediate need to protect the policy of the federal venue statute. Specifically, the Court

noted the undesirability of subjecting the two banks "to long and complex litigation which may be all for naught" by postponing review. *Id.*

The third case discussed by the *Cox* majority opinion as an example of its fourth category is *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). *Cox*, 420 U.S. at 484. In *Tornillo*, a newspaper claimed the First and Fourteenth Amendments immunized it from suit for damages by a candidate for public office based on the newspaper's refusal to print the candidate's reply to the paper's editorial critical of him, which was alleged to be in violation of a state "right to reply" statute. In its jurisdictional holding, the Court noted it would be "intolerable to leave unanswered . . . an important question of the freedom of the press under the First Amendment." *Tornillo*, 418 U.S. at 247, n.6. There is little discussion of how the Court reached its jurisdictional holding. However, the contention of both parties that the Court had jurisdiction coupled with their joint claim that the exercise of First Amendment rights would be restricted until the Court's review along with the possibility that review could be rendered unnecessary by further state court proceedings appears to have persuaded the Court that delaying review would erode the federal policy underlying the First Amendment.

In *Cox*, the Court was asked to review a state supreme court decision that a state law prohibiting the publication of rape victims' names and identities was a legitimate limitation on the First Amendment's guarantee of freedom of the press. Although the state supreme court had remanded the case for further proceedings in the state trial court, the Court held the state court decision was final for purposes of jurisdiction. In support of its jurisdictional

holding, the Court noted that if the state court had "erroneously upheld the statute, there should be no trial at all," *Cox*, 420 U.S. at 485, and that delaying review would leave the press in the state to operate "in the shadow of the civil and criminal sanctions of a rule of law and a statute the constitutionality of which is in serious doubt," *id.* at 486.

There is no common characteristic shared by the federal policies at issue in *Curry*, *Langdeau*, *Tornillo*, and *Cox* other than the Court's determination that immediate review was warranted. In *Curry* and *Langdeau*, federal statutes provided the basis for the federal policies to be protected from erosion by delayed review. In *Tornillo* and *Cox*, the United States Constitution, in particular the First Amendment thereto, provided the basis for the federal policies that warranted immediate review. However, the fact that a federal policy is enshrined in the Constitution or codified by federal statute does not mean the Court will determine it is necessarily worthy of protection by immediate review. *See, e.g.*, *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 56 (1989) (citing *Flynt v. Ohio*, 451 U.S. 619 (1981) for the proposition that the federal policy embodied in the Equal Protection Clause does not deserve protection from erosion similar to the federal policy embodied in the First Amendment).

C. The "federal policy" criterion has not been clarified in the more than thirty years since *Cox* was decided.

The lack of clarity concerning the scope of *Cox*'s fourth exception has resulted in a waste of the Court's energy and that of the parties on more than one occasion. Worse, the cases, in which *certiorari* was initially granted but the

case was ultimately dismissed for want of jurisdiction, do not clarify the scope of the exception.

For example, in *Johnson v. California*, 541 U.S. 428 (2004) (*per curiam*), although *certiorari* was initially granted, the Court ultimately dismissed the case for want of jurisdiction following argument on the merits and supplemental briefing on the jurisdictional issue. In *Johnson*, the petitioner sought review of a state supreme court's decision rejecting his *Batson*[6] claim and reinstating his conviction. The state supreme court had also remanded the case to the state intermediate appellate court to address the petitioner's evidentiary claims. The petitioner argued the case fit within *Cox*'s fourth exception. However, the Court held the fourth exception inapplicable because "petitioner can make no convincing claim of erosion of federal policy that is not common to all decisions rejecting a defendant's *Batson* claim." *Id.* at 430 (citing *Florida v. Thomas*, 532 U.S. 774, 780 (2001)).

There is no further discussion of the scope of *Cox*'s fourth category of cases other than the implicit suggestion that the scope of the "federal policy" criterion might be limited to require the erosion that might occur by delay be unique to the petitioner.[7] Because none of the other cases the Court has recognized as falling within *Cox*'s fourth

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[6] *Batson v. Kentucky*, 476 U.S. 79 (1986).

[7] Nor did Chief Justice Rehnquist provide additional discussion of the scope of the fourth *Cox* category in his opinion for a unanimous Court in *Florida v. Thomas*. In contrast to the more lengthy discussion of each of the other *Cox* categories, *Thomas*, 532 U.S. at 777-780, the discussion of the fourth *Cox* category merely notes that "the State can make no claim of serious erosion of federal policy that is not common to all run-of-the-mill decisions suppressing evidence in criminal trials." *Id.* at 780.

exception involved potential erosion of a federal policy unique to the petitioner, the Court's jurisdictional holding in *Johnson* may rest more on the fact that it has viewed the federal policies enshrined in the Equal Protection Clause as undeserving of protection by immediate review.[8]

Nike, Inc. v. Kasky, 539 U.S. 654 (2003) (*per curiam*), is another example of a case in which the writ was "dismissed as improvidently granted." *Id.* at 655. In *Nike*, a state supreme court had reversed a state trial court's dismissal of the respondent's complaint, which had been affirmed by an intermediate state appellate court, and remanded for further proceedings. The respondent had sued Nike for unfair and deceptive practices under the state's laws based upon the company's public statements concerning working conditions under which Nike's products are made. The Court had granted *certiorari* to decide whether a corporation participating in a public debate may be subjected to liability for factual inaccuracies and whether the First Amendment protects such commercial speech. The Court provided no reasoning for its decision to dismiss the writ.

Justice Stevens articulated three possible reasons for the dismissal in his concurring opinion, in which he was

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[8] This basis does not explain the Court's holding regarding the fourth *Cox* category in *Thomas*. However, another justification may account for the limited discussion of the fourth *Cox* category and the Court's jurisdictional holding in *Thomas*: the underlying concern that asserting jurisdiction to immediately decide the *Batson* issue might lead to piecemeal review and the need for later review of a *Chimel* issue. *See Thomas*, 532 U.S. at 780; *see also Nike, Inc. v. Kasky*, 539 U.S. 654, 660 (2003) (Stevens, J., concurring) (citing *Flynt v. Ohio*, 451 U.S. 619, 621 (1981) (*per curiam*) ("no probability of piecemeal review with respect to federal issues")).

joined by Justice Ginsberg: the state supreme court decision was not "final," the parties lacked standing to invoke the Court's jurisdiction, and the lack of a developed record below, which might aid the Court, militated judicial restraint. *Id.* at 656-665.

Three Justices dissented. Justice Kennedy did not provide a reason for his dissent. Justice Breyer in his dissenting opinion, which was joined by Justice O'Connor, reasoned the state court decision on the First Amendment issue met the criteria for a final decision under *Cox*'s fourth category. *Id.* at 681-683. In the dissenting Justices' view, the federal policy in favor of free speech would be seriously eroded absent immediate review because the state court's decision would "chill" the exercise of free speech rights by corporations doing business in the state. *Id.* at 682.

Unlike *Flynt*, where the issue presented was viewed by a majority of the court as whether a state court decision disregarded the Fourteenth Amendment's equal protection guarantee, there is no doubt that the issue presented in *Nike* is whether a state court decision disregards the First Amendment's freedom of speech guarantee. Yet, without explanation, the Court reaches the opposite jurisdictional holding from *Tornillo* and *Cox*. Thus, even the scope of the First Amendment federal policy that warrants the protection of immediate review is unclear. The conflicting results suggests the Court views the freedom of the press federal policy as demanding immediate review whereas the freedom of speech federal policy is on par with the equal protection federal policy.

However, the above suggestion does not hold true for the Court's jurisdictional holding in *Fort Wayne Books, Inc.*

v. Indiana, 489 U.S. 46 (1989). There, the Court recognized the broad federal policy of adjudicating the proper scope of the First Amendment's protections fell within the scope of *Cox*'s fourth exception.

In *Flynt v. Ohio*, 451 U.S. 619 (1981) (*per curiam*), a divided court dismissed the writ of *certiorari* for want of jurisdiction. Magazine publishers sought review of a state supreme court decision rejecting their claim that obscenity charges against them for publishing a political cartoon should be dismissed on the ground that they were singled out for prosecution in violation of the Equal Protection Clause because of their exercise of First Amendment rights. The Court found no "identifiable federal statutory or constitutional policies which would have been undermined" by delayed review. *Id.* at 622. The view of the four dissenting Justices that violations of the Constitution erode federal policy within the meaning of the fourth *Cox* exception, *id.* at 623-624, finds support in Justice Scalia's view that the Court's "solemn responsibility" is to "ensure that when courts speak in the name of the Federal Constitution, they disregard none of its guarantees." *Kansas v. Marsh*, 548 U.S. ___, 126 S. Ct. 2516, 2531, 165 L. Ed. 2d 429 (2006) (Scalia, J., concurring).

In the absence of clear guidance from the Court as to the scope of the federal policy criterion of *Cox*'s fourth exception, energy of the Court and parties will continue to be wasted. This case provides the Court an opportunity to articulate a definitive category of federal policies that will be eroded by delayed review. Such policies are those in which the principle aim is against allowing further state court proceedings.

D. Where the constitutional challenge goes to the very right of the state to proceed against an individual, federal policy should permit review under *Cox*.

The Court has already implicitly recognized that federal policies aimed at prohibiting state court proceedings will be eroded by delayed review, and therefore, fall under *Cox*'s fourth exception. In *Curry*, the federal labor statute vested exclusive jurisdiction over the controversy in the National Labor Relations Board. Without jurisdiction, further state court proceedings were prohibited. Similarly, in *Langdeau*, the issue was whether the federal venue statute prohibited further state court proceedings in the county in which the banks were sued. In these cases, the state court's authority to continue with further proceedings was contested based upon a federal policy.

The federal policy that would be eroded here if review is not granted is one the Court can easily articulate and embrace as a bright line rule to guide application of the fourth *Cox* exception. It is a policy the Court is familiar with and has applied in other contexts. The Petitioners' here are "contesting the very authority of the [state] to hale [them] into court to face trial on the charge[s] against [them]." *Abney v. United States*, 431 U.S. 651, 659-660 (1977) (addressing the finality of a pretrial order denying a motion to dismiss an indictment on double jeopardy grounds). They allege that Washington's campaign finance disclosure law fails to provide fair notice, as required by the Fourteenth Amendment guarantee of due process, that their alleged conduct subjects them to criminal prosecution and punishment. Petitioners urge the Court to accept *certiorari* to determine whether a federal constitutional challenge that goes to the very authority of the state to

hale them into court, is one that warrants immediate review under *Cox*. In these circumstances, failure to review a constitutional challenge would seriously erode a federal policy of needlessly subjecting an individual to the opprobrium of criminal prosecution. *See id.*

2. Does a statutory scheme that explicitly proscribes certain conduct and subjects violators to "civil remedies and sanctions," provide fair notice that violators may be subjected to criminal prosecution and punishment?

This Court has repeatedly stated "statutes which fail to give due notice that an act has been made criminal before it is done are unconstitutional deprivations of due process of law." *Jordan v. DeGeorge*, 341 U.S. 223, 230 (1951). The Due Process Clause's "fair warning requirement," *United States v. Lanier*, 520 U.S. 259, 265 (1997) (quoting *McBoyle v. United States*, 283 U.S. 25, 27 (1931)), stems from the fundamental principle expressed by the maxim *nulla poena sine lege*. *Rogers v. Tennessee*, 532 U.S. 451, 470 (2001) (Scalia, J., dissenting). *Nulla poena sine lege*, which means no punishment without a law authorizing it, dates back to the ancient Greeks and is described as "one of the most 'widely held value-judgment[s] in the entire history of human thought.'" *Id.* at 467-468 (quoting J. Hall, *General Principles of Criminal Law* 59 (2d ed. 1960)).

The maxim is known as the "principle of legality," which has been described as "*the* first principle" of the criminal law. T. Morrison, *Fair Warning and the Retroactive Judicial Expansion of Federal Criminal Statutes*, 74 S. Cal. L. Rev. 455, 462, n.28 (2001) (quoting H. Packer, *The Limits of Criminal Sanction* 79-80 (1968)); *see also*

J. Hall, *Nulla Poena Sine Lege*, 47 Yale L.J. 165, 184 (1937) ("it must be remembered that in the last analysis *nulla poena* represents the most cherished of all values involved in the administration of the criminal law."). This first principle and most cherished value of criminal law rests upon a simple premise: "it is unjust that what was legal when done should be subsequently held criminal, that what was punishable by a minor sanction when committed should later be punished more severely." Hall, 47 Yale L.J. at 171.

The fundamental principle that gave birth to the fair warning requirement is related to the "timeless and universal" principle that the legal effect of conduct should be assessed under the law as it existed at the time the conduct took place, *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990) (Scalia, J., concurring), which "is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994).

These two principles similarly serve common interests and provide guarantees against governmental abuses. Both assure that criminal laws give fair warning of their effect, and both further the notion of fundamental justice that governments must abide by the rules of law they establish in order to deprive a person of life or liberty. Morrison, 74 S. Cal. L. Rev. at 463-464. Without the law providing notice of the conduct the legislature has made criminal or the law giving notice of the penalty to be imposed for conduct that has been made criminal, the government is not authorized to subject individuals to criminal liability for alleged violations of the law.

The first principle and most cherished value of criminal law is not limited to the definition of crimes at the time conduct took place, but also extends to and encompasses the penalty to be imposed for engaging in prohibited acts. By its plain language, the maxim prohibits penalties not authorized by law. The underlying premise acknowledges the unjust result of increasing the severity of penalty for specific conduct after the conduct has taken place. Hall, 47 Yale L.J. at 171 ("it is unjust . . . that what was punishable by a minor sanction when committed should later be punished more severely.").

But the Court has not answered the important question whether the Due Process clause's constitutional guarantee of fair notice extends and encompasses the punishment available for engaging in prohibited acts. This case invites the Court to determine how this fundamental principle is to be applied where the state's theory of prosecution for violations of a general criminal law rests upon alleged conduct that is in violation of specific civil laws. Specifically, does a general reference to any other remedies in the specific civil statute give fair notice that conduct in violation of the civil statue may subject the individual to criminal punishment?

In *Healthscript, Inc. v. State of Indiana*, 770 N.E.2d 810 (Ind. 2002) the Indiana Supreme Court held a general reference to a particular article of the state code was insufficient notice to prosecute the defendant for alleged acts in violation of the cross-referenced penal statute. In *Healthscript*, the state charged defendant with Medicaid fraud under Ind. Code § 35-43-7.1(a)(1) (Supp. 1997), which makes it a class D felony to knowingly or intentionally file a Medicaid claim in violation of Indiana Code § 12-15. The state's theory was that the defendant violated Ind.

Code § 12-15-21-1 by allegedly filing Medicaid claims for more than its usual and customary charges, which the state argued was a class D felony under the penal statute. Healthscript's motion to dismiss, which argued the general cross reference to Medicaid statutes deprived defendant of due process because it failed to give fair warning that the specific alleged conduct was criminal, was denied. On appeal, the Indiana Supreme Court reversed the trial court and ordered the trial court to dismiss the information against Healthscript.

The Indiana court reasoned that while the state's theory was plausible because of the specific cross reference to the article of the state code concerning Medicaid, such reference was insufficient to meet due process requirements because it failed to give "fair warning . . . in language that the common world will understand, of what the law intends to do if a certain line is passed." *Healthscript*, 770 N.E.2d at 816 (quoting *United States v. Bass*, 404 U.S. 336, 348 (1971) (quoting *McBoyle v. United States*, 283 U.S. 25, 27 (1931))).

Like *Healthscript*, this case involves a circumstance where the state's theory of prosecution is based upon alleged conduct in violation of a statute other than the statute charged. And Petitioners, like the defendant in *Healthscript*, moved to dismiss the information against them arguing they were deprived of fair warning that the specific alleged conduct was criminal. Despite a specific cross reference to a particular article of the Indiana Code, the Indiana high court held such reference was insufficient. In contrast, the Washington Supreme Court in this case rejected Petitioners' argument that a general reference to "any other remedies provided by law" deprived

them of fair notice that their specific alleged conduct subjected them to criminal punishment.

The Washington campaign finance disclosure law at issue here provides less warning that Petitioners' specific alleged conduct is criminal than the Indiana Medicaid law that was at issue in *Healthscript*. The penal statute under which Healthscript was charged specifically referenced the article of the Indiana Code that prohibited Healthscript's alleged specific conduct. Here, the penal statute under which Petitioners were charged makes no reference to the statute that specifically prohibits Petitioners' alleged conduct (*i.e.*, reimbursing others for campaign contributions they made), and the cross reference in the campaign finance disclosure statute at issue is more vast and less specific than the cross reference at issue in *Healthscript*. Accordingly, Petitioners here received less notice that their specific alleged conduct was criminal than the notice provided to the defendant in *Healthscript*. Yet, Washington's highest court found the notice comported with due process requirements, while Indiana's highest court reached the opposite conclusion in *Healthscript*.

The Indiana court reasoned that fair notice is not provided where one must wade through an entire article in the state's code on a specific subject and then through the agency regulations on the subject to determine what conduct a specific statute proscribes as criminal. In contrast, the effect of the Washington court's holding is that one must wade, not only through one article of a state's code, but rather the state's entire criminal code to determine what conduct a specific statute makes criminal.

This case provides an opportunity for the Court to resolve the conflicting opinions of state high courts and set

forth the standard applicable for determining whether fair notice that specific conduct may subject one to criminal punishment, as required by the Fourteenth Amendment, has been provided by a remedial statute's general reference to other remedies provided by law.

CONCLUSION

For the foregoing reasons, the petition for writ of *certiorari* should be granted.

Respectfully submitted,

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. JOHN GILBERT CONTE; FRANK FRANCIS COLACURCIO, JR.; FRANK FRANCIS COLACURCIO, SR.; and MARSHA MARIE FURFARO, Respondents.	)	No. 78995-9 En Banc Filed March 15, 2007

MADSEN, J. – The defendants, John Conte, Frank Colacurcio, Jr., Frank Colacurcio, Sr., and Marsha Furfaro, were charged with nine counts of violating RCW 40.16.030. The charges relate to campaign disclosure reports filed by three Seattle City Council members during their 2003 reelection campaigns. The State alleges that contributions made by some individuals to these council members were reimbursed in cash by the defendants. The State further alleges that as a result of the defendants' scheme, the candidates filed false campaign disclosure reports because they did not identify the true source of the contributions.

The trial court granted the defendants' motion for dismissal of the charges, holding, as a matter of law, that the public disclosure act (PDA), chapter 42.17 RCW, provides the exclusive penalties for the conduct alleged by the State.

The State maintains that chapter 42.17 RCW does not bar prosecution of the defendants under RCW 40.16.030. We agree. Accordingly, we reverse the trial court, reinstate

the charges against the defendants, and remand for further proceedings.

FACTS

On July 12, 2005, the State filed an information charging the defendants with one count each of conspiracy to offer a false instrument for filing or record, in violation of RCW 40.16.030 and RCW 9A.28.040(1).[1] The information also charges each of the defendants with at least one count of knowingly procuring, offering, or causing an innocent person to offer a false instrument for filing or record in violation of RCW 40.16.030 and RCW 9A.08.020(1) and (2)(a) (a total of eight additional counts each applying to one or two of the defendants).[2]

According to the certification for determination of probable cause, which was prepared by an investigator for the Seattle Ethics and Elections Commission:

> The Colacurcio family owns and operates *Rick's,* an adult entertainment establishment commonly called a strip club . . . [and] sought a rezone to obtain more parking for *Rick's* for a

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[1] RCW 9A.28.040(1) provides that "[a] person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement."

[2] RCW 9A.08.020(1) provides that "[a] person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable." RCW 9A.08.020(2)(a) provides that "[a] person is legally accountable for the conduct of another person when . . . [a]cting with the kind of culpability that is sufficient for the commission of the crime, he causes an innocent or irresponsible person to engage in such conduct."

number of years. In the 1980's additional parking was created on property owned by *Rick's* without city approval. *Rick's* was given the option of removing the parking lot or paying a fine, and chose to pay the fine. *Rick's* then initiated efforts to get the parking approved for use by obtaining a rezone. Attempts to get the rezone failed in 1988 and 1998.

Rick's applied again in September 2002. The rezone was opposed by the City [of Seattle] and denied by a hearing examiner. *Rick's* appealed, so the rezone issue was set to be decided by the City Council, acting as a quasi-judicial body. When issues are to be resolved by the City Council acting in a quasi-judicial capacity, City Council rules prohibit council members from undisclosed ex-parte contact with litigants or their agents. On July 7, 2003, the City Council approved the rezone 5-4.

In the fall of 2003 the Seattle Ethics and Elections Commission . . . fined council members Jim Compton and Heidi Wills for violation of [Seattle Municipal Code (SMC)] 4.16.070(1)(a) when they voted on the rezone after undisclosed ex-parte contacts with representatives of *Rick's*. Judy Nicastro was fined $200 for violating SMC 4.16.070(3)(a) because she accepted a lunch paid for by Albert D. Rosellini, . . . a close personal friend of the Colacurcio family . . . [d]uring [which he] lobbied Nicastro to grant the zoning change. . . . Wills was fined $1,500 for voting with impaired judgment, because she had toured the *Rick's* rezone site with Albert Rosellini . . . after she had been notified the rezone issue was quasi-judicial.

> News reports . . . mentioned that Compton, Nicastro, and Wills had received a total of about $36,000 from "people connected to Frank Colacurcio, Jr." (Seattle Times July 19, 2003 article.) . . . These contributions were received by the candidates' reelection committees *before* the rezone was approved. After these contributions came to light, each of the three candidates refunded all of the contributions.

Clerk's Papers (CP) at 6-7. The certification for determination of probable cause explains that in November 2003 the commission learned two contributors to Nicastro's campaign had been reimbursed for their contributions, and then "[i]nvestigators began looking at the bank records of other persons who contributed to Compton, Nicastro, or Wills and who were known to have ties to the Colacurcios." CP at 9. The investigators identified 14 persons whose contributions were reimbursed by the defendants. The certification also explains some of the campaign contribution reporting requirements of the SMC and the PDA. The certification states that the defendants caused the council members' election campaign committees to file false campaign finance reports with the Seattle City Clerk, the Washington State Public Disclosure Commission, or both, pursuant to the SMC and the PDA.

Following arraignment, each of the defendants pled not guilty to the charges against him or her. On January 20, 2006, the defendants filed motions to dismiss on various grounds. Only the first motion is at issue. In this motion the defendants argued that the civil enforcement provisions of chapter 42.17 RCW "preempt" the general criminal penalties in RCW 40.16.030. They also argued that criminal prosecution under RCW 40.16.030 would violate their due process rights. Judge Michael J. Fox

granted the motion. The State appealed. On July 28, 2006, we accepted the Court of Appeals certification of the case.

ANALYSIS

A trial court's pretrial dismissal of criminal charges pursuant to a *Knapstad* motion[3] is subject to de novo review. *State v. Freigang,* 115 Wn. App. 496, 501, 61 P.3d 343 (2002). Similarly, because the issue whether chapter 42.17 RCW precludes prosecution under RCW 40.16.030 is an issue of statutory construction, appellate review is de novo. *In re Custody of Shields,* 157 Wn.2d 126, 140, ¶ 35, 136 P.3d 117 (2006). Our goal is to determine whether the legislature intended that the penalty provisions of chapter 42.17 RCW bar prosecution under RCW 40.16.030. *See id.*

The State maintains that the trial court erred in dismissing the information, arguing that the "general-specific" rule applied by the trial court is not applicable under the circumstances. Under this rule, if "concurrent general and special acts are in pari materia and cannot be harmonized, the latter will prevail, unless it appears that the legislature intended to make the general act controlling." *Wark v. Wash. Nat'l Guard,* 87 Wn.2d 864, 867, 557 P.2d 844 (1976); *see also In re Estate of Kerr,* 134 Wn.2d 328, 343, 949 P.2d 810 (1998) ("[a] more specific statute supersedes a general statute only if the two statutes pertain to the same subject matter and conflict to the extent they cannot be harmonized"). *State v. Presba,* 131 Wn. App. 47, 52, ¶ 9, 126 P.3d 1280 (2005) ("when a specific statute punishes the same conduct punished under a general statute, they are concurrent statutes and the

[3] *State v. Knapstad,* 107 Wn.2d 346, 729 P.2d 48 (1986).

State must charge only under the specific statute"); *Port Townsend Sch. Dist. No. 50 v. Brouillet,* 21 Wn. App. 646, 655, 587 P.2d 555 (1978) ("[i]t is a fundamental rule of statutory construction that where a general statute and a subsequent special statute relate to the same subject matter, the provisions of the special statute will prevail unless it appears that the legislature intended expressly to make the general statute controlling").

RCW 40.16.030, which the defendants argue is the superseded general statute, enacted in 1909, provides:

> Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and[4] shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

The statutes that are said to constitute the "special" or "specific" statute are found in chapter 42.17 RCW. To place them in context, we provide a brief explanation of the relevant statutory scheme. In 1972 and 1992 the voters enacted two initiatives that comprise the greater part of the PDA. Initiative 276 (I-276) was approved by the voters in 1972 and codified as chapter 42.17 RCW. Among other purposes of I-276 are the following, codified at RCW 42.17.010:

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[4] Laws of 2003, ch. 53, § 216, effective July 1, 2004, inserted: "is guilty of a class C felony and."

> It is hereby declared by the sovereign people to be the public policy of the state of Washington:
>
> (1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.
>
> . . . .
>
> (3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest.
>
> . . . .
>
> (10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

Modifications have been made to chapter 42.17 RCW since I-276 was implemented in 1973. Chief among these, in 1992 the voters approved Initiative 134 (I-134), the Fair Campaign Practices Act (Laws of 1993, ch. 2, §§ 1-36), which supplemented and amended the chapter. *Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n*, 133 Wn.2d 229, 233, 943 P.2d 1358 (1997).

The statutes in chapter 42.17 RCW, then, require that the public be informed of campaign and lobbying contributions and, through this disclosure, help to ensure the integrity of government, and they require that campaign contributions be limited to prevent disproportionate or controlling influence by financially strong groups. *See Nelson v. McClatchy Newspapers, Inc.*, 131 Wn.2d 523, 532-33, 936 P.2d 1123 (1997); *State v. (1972) Dan J. Evans*

Campaign Comm., 86 Wn.2d 503, 507-08, 546 P.2d 75 (1976); *Fritz v. Gorton*, 83 Wn.2d 275, 284, 517 P.2d 911 (1974).

Chapter 42.17 RCW includes two statutes that the defendants concede would be violated if the State's allegations were proven and its theory of the law was correct. RCW 42.17.120 provides that

> [n]o contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

And RCW 42.17.780 provides: "A person may not, directly or indirectly, reimburse another person for a contribution to a candidate for public office, political committee, or political party."

As the trial court determined, violation of either of these statutes would subject the defendants to the punitive and enforcement sections of chapter 42.17 RCW, RCW 42.17.390 and .400. RCW 42.17.390 provides that "[o]ne or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law" and then lists a number of possible sanctions. RCW 42.17.400 governs enforcement and provides that the attorney general and the prosecuting authorities of the State's political subdivisions "may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17.390." RCW 42.17.400(1). It also provides for citizens' actions if the attorney general

and prosecuting attorney fail to bring an action within specified time periods. RCW 42.17.400(4).

The trial court determined that the PDA constitutes a comprehensive statutory scheme setting out prohibited acts and requirements, including reporting requirements, for candidates and contributors. The court granted the motion to dismiss on the basis that because the act "treated the entire subject area of political contributions to local and state-wide campaigns," the general-specific rule applies, with the penalty provisions of chapter 42.17 RCW being the controlling "specific statute" under which the State must charge. Tr. of Proceedings (Feb. 16, 2006) at 26.[5]

For a number of reasons, we disagree. First, RCW 42.17.390 expressly provides that "other remedies provided by law" are not displaced by chapter 42.17 RCW. Second, the "general-specific" rule is not applicable both because chapter 42.17 RCW and RCW 40.16.030 are not in conflict and because there is insufficient support for any conclusion that the legislating body, the people, intended that chapter 42.17 RCW supersede RCW 40.16.040. And finally, we do not believe the rule applies where a criminal

[5] Some of the trial court's reasoning seems couched in language relating to preemption of one statute by another, while other parts of the court's explanation show the basis of the decision being the application of the "general-specific rule." While each of these theories has specific application in specific circumstances, here we are concerned with whether enactment of chapter 42.17 RCW, and in particular RCW 42.17.390 and .400, bar prosecution under RCW 40.16.030 where the conduct at issue involves filing false campaign contribution reports. The chief dispute is whether the "general-specific" rule applies. We note that some cases refer to application of the "general-specific" rule as involving repeal of the general statute by the specific or special statute.

statute and civil statute are in question. Absent explicit legislative command that a civil statute precludes prosecution under an existing criminal statute or that the criminal statute is repealed, the "general-specific" rule does not apply because its application would infringe on the prosecuting attorney's discretion to charge a crime.

Turning to the first of these reasons, as set out above, RCW 42.17.390 expressly states that the civil remedies and sanctions set forth in the statute "may be imposed by court order *in addition to any other remedies provided by law.*" (Emphasis added.) Thus, the PDA expressly provides that any remedy available under any other statute may be imposed.

The defendants maintain, however, that no lay voter would reasonably construe the reference to "other remedies" to mean criminal penalties. They contend that a court must view the language as the average informed lay voter would read it, relying on *State ex rel. Evergreen Freedom Foundation v. Washington Education Association,* 140 Wn.2d 615, 637, 999 P.2d 602 (2000) and *Senate Republican Campaign Committee,* 133 Wn.2d at 243. However, because the statute mentions a number of monetary fines and penalties, and repeatedly refers specifically to "civil penalt[ies]," RCW 42.17.390(3), (4), (5), it appears to us just as reasonable (if not more so) that the informed lay voter would think that the reference to "*any other* remedies provided by law" means penalties other than the "civil penalt[ies]," i.e., criminal penalties. RCW 42.17.390 (emphasis added).

Moreover, once an initiative is enacted into law, the same principles of statutory construction apply as apply when the legislature enacts a measure. *McGowan v. State,*

148 Wn.2d 278, 288, 60 P.3d 67 (2002); *Wash. State Republican Party v. Pub. Disclosure Comm'n,* 141 Wn.2d 245, 280, 4 P.3d 808 (2000); *City of Spokane v. Taxpayers of Spokane,* 111 Wn.2d 91, 97, 758 P.2d 480 (1988). One of these principles of statutory construction is that the legislature is "'presumed to have full knowledge of existing statutes affecting the matter upon which they are legislating.'" *Martin v. Triol,* 121 Wn.2d 135, 148, 847 P.2d 471 (1993) (quotation marks omitted) (quoting *Bennett v. Hardy,* 113 Wn.2d 912, 926, 784 P.2d 1258 (1990)). Thus, the voters must be presumed to have known that RCW 40.16.030 made it a felony to knowingly offer any false or forged instrument for filing when they enacted I-276 in 1972 and I-134 in 1992. Yet, the initiative did not provide that the criminal statute was no longer effective.

The defendants maintain, however, that the voters intended this statutory scheme to exclusively regulate the field and knew that it would necessarily preempt the earlier general statute. *See Wark,* 87 Wn.2d at 866. The defendants maintain that the sole provisions regarding penalties and remedies, RCW 42.17.390 and .400, do not impose or authorize any criminal sanctions. Further, they urge, unlike other statutes that expressly preserve the right to bring criminal actions, such as state securities law, RCW 21.20.420, and the workers' compensation law, RCW 50.36.010, chapter 42.17 RCW does not contain such a provision. These considerations, the defendants maintain, lead to the conclusion that when the voters enacted I-276 in 1972 and I-134 in 1992, they intended that the provisions in chapter 42.17 RCW would preempt any other statutes penalizing conduct within their purview.

But the defendants point to no express indicator that the voters intended to foreclose criminal prosecutions

under existing statutes. Further, the reference to "any other remedies provided by law" in RCW 42.17.390 expressly shows that other *civil* remedies are not precluded. If other civil penalties are not foreclosed, then it necessarily follows that the act is not intended to be exclusive or to "preempt the field," contrary to the defendants' claim.

The defendants also contend, though, that because the term "any other remedies provided by law" in RCW 42.17.390 follows the phrase "civil remedies and sanctions" the two should be read together, and "and other remedies provided by law" should be understood to mean other consistent civil remedies. We do not find this argument convincing. Rather than suggesting that only the *same* kind of remedies are preserved, the words "*any other*" suggest additional remedies can be of *any* kind, including criminal remedies.

The defendants also rely on *United States v. Hansen,* 249 U.S. App. D.C. 22, 772 F.2d 940, 946 (1985), where the court, addressing the phrase "'[s]uch remedy shall be in addition to any other remedy available under statutory or common law'" (quoting 2 U.S.C. § 706), said that it "seems specifically directed to civil actions since criminal sanctions are rarely described as 'remedies.'" But in contrast, *this* court has expressly made reference to "*criminal remedies*" on a number of occasions, and, more importantly for present purposes, so has the legislature. *See, e.g., In re Det. of C.W.,* 147 Wn.2d 259, 282, 53 P.3d 979 (2002) (referring to "'civil and criminal remedies'"); *Winchester v. Stein,* 135 Wn.2d 835, 849, 959 P.2d 1077 (1998) (referring to "both civil and criminal remedies" available under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and the Washington Criminal Profiteering Act, chapter 9A.82 RCW); *City of Tacoma v. State,*

117 Wn.2d 348, 351, 816 P.2d 7 (1991) (referring to "criminal remedies" under the domestic violence act of 1979); RCW 49.60.020 (providing that nothing contained in the provisions of Washington's law against discrimination "shall . . . be construed to deny the right to any person to institute any action or pursue any civil *or criminal remedy* based upon an alleged violation of his or her civil rights" (emphasis added)).

The defendants also maintain that the Court of Appeals has read the phrase "other remedies" narrowly, citing *Crisman v. Pierce County Fire Protection District No. 21,* 115 Wn. App. 16, 60 P.3d 652 (2002). *Crisman* does not support the defendants' argument. There, the plaintiff claimed that the phrase "in addition to any other remedies provided by law" permitted recovery through a private tort action. The court rejected the claim, finding that chapter 42.17 RCW does not show legislative intent to create an implied private tort cause of action. In the present case, in contrast, the question is whether an existing criminal statute can be utilized in addition to civil remedies. *Crisman* is not analogous.

We conclude that the express acknowledgement in RCW 42.17.390 that the remedies listed do not preclude "any other remedies provided by law" shows that chapter 42.17 RCW is not intended to preclude a criminal action under RCW 40.16.040.

The second reason that the trial court's conclusion is incorrect is that, as noted, "[a] more specific statute supersedes a general statute only if the two statutes pertain to the same subject matter and conflict to the extent they cannot be harmonized." *In re Estate of Kerr,*

134 Wn.2d at 343. Here, as the State argues, there is no conflict between RCW 40.16.040 and chapter 42.17 RCW.

Under RCW 42.17.400, the attorney general or a county prosecuting attorney can bring an action to impose a fine or other civil remedy for a violation of a provision of chapter 42.17 RCW. Under RCW 42.17.390, a civil penalty of not more than $10,000 can be imposed for a violation of any provision of the chapter; violations of RCW 42.17.640 (setting campaign limits) are subject to fines of $10,000 or three times the amount of the illegal contribution, whichever is greater; fines of $10 per day may be imposed for each day a properly completed statement of report required by the chapter is delinquent; and a civil penalty equivalent to the amount an individual fails to report as a contribution or expenditure may be imposed.

Working in tandem, RCW 40.16.030 provides that a person can be convicted of a felony for filing or causing to be filed a campaign finance report that he or she knows is false, and then only if all the elements of the offense are proven beyond a reasonable doubt. As the State argues, it is only when a person "knowingly" causes the public to be provided with false information that an individual "crosses the line" into criminal accountability.

The State also maintains that the two statutes are not concurrent, and thus the "general-specific" rule does not apply. We agree. Statutes are concurrent for purposes of the rule if "the general statute will be violated in each instance where the special statute has been violated." *State v. Shriner*, 101 Wn.2d 576, 580, 681 P.2d 237 (1984). "It is not relevant that the special statute may contain additional elements not contained in the general statute." *Id.* Initially, as the State maintains, the burden of proof for

the criminal statute, beyond a reasonable doubt, is not the same as it is for a civil violation under chapter 42.17 RCW. Further, as the State maintains, RCW 40.16.030 contains a mens rea requirement. Violations of chapter 42.17 RCW can occur that would not meet the beyond a reasonable doubt standard and would not involve a "knowingly" mental state. Thus, the two statutes are not concurrent.[6]

The defendants say, though, that RCW 42.17.920 precludes reliance on RCW 40.16.030. RCW 42.17.920 states that "[i]n the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern." But there is no conflict. In addition, RCW 42.17.920 must be read in conjunction with RCW 42.17.390, which expressly authorizes "any other remedies provided by law." Because chapter 42.17 RCW expressly authorizes such "other remedies," they are not in conflict with the chapter.

The State says a prosecution and conviction under RCW 40.16.030 is consistent with the declaration of policy found in the first section of I-276: "It is hereby declared by the sovereign people to be the public policy of the State of Washington ... [t]hat political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided." Laws of 1973, ch.1, § 1 (I-276). Thus, rather than acting in conflict with

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[6] The defendants point out that if a violation of chapter 42.17 RCW is intentional, penalties may be trebled. RCW 42.17.400(5). Therefore, they contend, the act includes a mens rea requirement. However, this does not mean that *all* violations of chapter 42.17 RCW would necessarily occur with a "knowingly" mental element, and thus it does not undercut the conclusion that the two statutes are not concurrent.

chapter 42.17 RCW, RCW 40.16.030 serves the purposes of the PDA.

The State's observation that a criminal prosecution under RCW 40.16.030 can effectuate public policy set out in chapter 42.17 RCW also highlights the distinctive nature of RCW 40.16.030. Prosecution under the criminal statute will always effectuate the goal of *another* statute or regulation. In *State v. Hampton,* 143 Wn.2d 789, 793-94, 24 P.3d 1035 (2001), we repeated the test for defining an instrument falling within the scope of the statute:

> "RCW 40.16.030 encompass[es] a document which is *required or permitted by statute or valid regulation* to be filed, registered, or recorded in a public office if (1) the claimed falsity relates to a material fact represented in the instrument; and (2a) the information contained in the document is of such a nature that the government is required or permitted by law, statute or valid regulation to act in reliance thereon; or (2b) the information contained in the document materially affects significant rights or duties of third persons, when this effect is reasonably contemplated by the express or implied intent of the statute or valid regulation which requires the filing, registration, or recording of the document."

(Quoting *State v. Price,* 94 Wn.2d 810, 819, 620 P.2d 994 (1980) (alteration in original).) "RCW 40.16.030 requires that a document be 'required or permitted by law, statute or valid regulation.'" *Hampton,* 143 Wn.2d at 794 (quoting *Price,* 94 Wn.2d at 819).

The defendants argue that chapter 42.17 RCW is not ambiguous, but if it were found to be ambiguous, the history and context of I-276 would support their claim.

They point out that nothing in the ballot title of I-276 mentions the possibility of criminal prosecution and a section of the 1972 voters' pamphlet entitled "The Law as it now exists" noted only that "[p]resently, candidates seeking nomination at a primary election must file a statement indicating the expenditures made for the purpose of obtaining their nomination. Violation is a misdemeanor." CP at 47. The defendants conclude that the people were thus informed they were being asked to approve a comprehensive scheme imposing only civil penalties and that doing so would repeal existing criminal penalties on the subject.

We do not agree. Nothing in the voters' pamphlet or in I-276 stated that I-276 was intended to repeal RCW 40.16.030, either in whole or in part.

The defendants say, though, that in the same election the ballot included an alternative campaign finance law proposed by the legislature, Referendum Bill 25 (R-25), with the ballot title and text informing voters of the referendum's criminal penalties (those violating the act would be guilty of misdemeanors). Because the voters chose I-276 over R-25, the defendants claim, this shows they understood the State's campaign laws would be enforced strictly through civil penalties.

As this court has often reasoned, legislative intent cannot be gleaned from the failure to enact a measure, particularly where there are several different components of it, any one of which might be critical to the decision to reject. *See, e.g., Leeper v. Dep't of Labor & Indus.*, 123 Wn.2d 803, 816, 872 P.2d 507 (1994) (rejection of a bill with five sections, four of which had nothing to do with the subject matter at issue, was not evidence of legislative

intent); *Spokane County Health Dist. v. Brockett,* 120 Wn.2d 140, 839 P.2d 324 (1992) (court will not speculate as to why the legislature rejects a proposed amendment). Here, speculation would not only be required for a measure with multiple sections (R-25 contained 20 substantive sections regulating electoral campaign financing), but, more significantly, it would be required for purposes of determining what rejection of one measure means to a separate measure altogether. We decline defendants' invitation to speculate.

There is no conflict between RCW 40.16.030 and chapter 42.17 RCW. Both can be given effect and harmonized.

The final reason why the "general-special" rule does not apply is because one of the statutes at issue is criminal and the other is civil. In two cases the Court of Appeals has addressed the "general-specific" argument in the context of a criminal statute and a civil statute. In each of the cases, Division Two rejected the claim that chapter 70.24 RCW is a special statute precluding prosecution under RCW 9A.36.011(1)(b), first degree assault with sexual motivation. Each case involved a defendant who had been diagnosed HIV (human immunodeficiency virus) positive and then engaged in unprotected sexual encounters. Chapter 70.24 RCW authorizes a public health officer to counsel a person with a sexually transmitted disease and, if necessary, to issue an order to cease and desist conduct that endangers the health of others, and, if other procedures have been exhausted, to bring an action to detain the person in a designated facility for a period of counseling and education not to exceed 90 days.

In *State v. Whitfield,* 132 Wn. App. 878, 134 P.3d 1203 (2006), the court explained, as it had in an earlier case, that while chapter 70.24 RCW provides a potential civil remedy, nothing in the chapter precludes the prosecutor from choosing to file criminal charges rather than exhausting available civil remedies. *Id.* at 889, ¶ 22 (citing *State v. Stark,* 66 Wn. App. 423, 431-32, 832 P.2d 109 (1992)). The court also noted that "[t]he exercise of prosecutorial discretion on whether to criminally charge someone involves a number of considerations, not the least of which is the public interest." *Stark,* 66 Wn. App. at 431.

Absent a very clear indication that the legislature intended that a civil statute preclude prosecution under a criminal statute, we will not apply the "general-specific" rule to foreclose the exercise of prosecutorial discretion or to negate the legislature's determination that the conduct described by the criminal statute is subject to prosecution as a crime.

Moreover, it is not unusual for criminal and civil statutes to "co-exist," as the State puts it. *E.g., United States v. Ursery,* 518 U.S. 267, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996) (criminal prosecution and civil property forfeiture for the same offense do not violate double jeopardy); *State v. Catlett,* 133 Wn.2d 355, 945 P.2d 700 (1997) (same). The "general-specific" rule should be applied to preclude a criminal prosecution only where the legislative intent is crystal clear.

We hold that chapter 42.17 RCW does not preclude prosecution under RCW 40.16.030.

We briefly note other arguments made by the defendants. Although the defendants maintain that the doctrine of repeal by implication does not apply in this case, the

parties have devoted considerable attention to the issue. The matter is readily resolved. Implied repeal is disfavored and will be found only (1) where the later act covers the entire field of the earlier one, is complete in itself, and is intended to supersede prior legislation, or (2) where the two acts cannot be reconciled and both given effect by a fair and reasonable construction. *Amalgamated Transit Union Legislative Council v. State,* 145 Wn.2d 544, 552, 40 P.3d 656 (2002); *Local No. 497, Int'l Bhd. of Elec. Workers v. Pub. Util. Dist. No. 2 of Grant County,* 103 Wn.2d 786, 788-89, 698 P.2d 1056 (1985). The first of these tests is not satisfied because chapter 42.17 RCW does not cover the entire subject matter of RCW 40.16.030. For example, as the State points out, RCW 40.16.030 applies to instruments such as child support orders. *State v. Sanders,* 86 Wn. App. 466, 937 P.2d 193 (1997). As to the second test, as explained above the State shows that the two statutes can be harmonized and both given effect.

The defendants also argue that the public disclosure commission's regulations and the SMC interpret chapter 42.17 RCW to preclude criminal penalties. As to the latter, it makes no difference how drafters of the SMC interpret chapter 42.17 RCW. As to the former, the defendants rely on regulations that encourage the parties to consider alternative, informal resolution procedures. WAC 390-37-010; -090. However, the PDC's preference for informal resolution does not preclude a prosecutor's decision to file criminal charges based on the same conduct or conduct which is more egregious.

The parties debate whether giving effect to both statutes would undermine enforcement under chapter 42.17 RCW. The defendants maintain that if the State can criminally prosecute the defendants under RCW 40.16.030,

then the State would also be free to ignore the civil statutes. Br. of Resp't's at 34. As the State points out, however, a number of campaign law violations will not rise to the level of the felony conduct described by RCW 40.16.030. Moreover, the State's ability to charge under two statutes is not a reason to hold that one of the statutes must prevail over the other.

The defendants next argue that if we reverse the trial court on statutory interpretation grounds, as we do, we should nonetheless affirm the trial court's dismissal of the charges on the alternative basis that the defendants were not provided with fair notice that their conduct would be subject to criminal prosecution. Defendants due process claim is based on article I, section 3 of the Washington Constitution. They do not argue that a different due process analysis applies under the state constitution than applies under the federal constitution and therefore the federal analysis will be applied here. *See State v. Sullivan,* 143 Wn.2d 162, 180 n.73, 19 P.3d 1012 (2001).

The defendants' due process argument fails because they make absolutely no argument at all about RCW 40.16.030 itself and whether this statute provides fair notice of the conduct that it proscribes and standards to prevent arbitrary enforcement. *State v. Harner,* 153 Wn.2d 228, 237, 103 P.3d 738 (2004); *State v. Riles,* 135 Wn.2d 326, 348, 957 P.2d 655 (1998). Because they have not even addressed RCW 40.16.030, they clearly have not met their burden of establishing the unconstitutionality of the statute under which they were charged beyond a reasonable doubt.

Accordingly, the trial court's dismissal of the charges will not be affirmed on the alternate due process ground asserted by the defendants.

CONCLUSION

Through its disclosure and limitation requirements, chapter 42.17 RCW helps to ensure the integrity of government by preventing disproportionate or controlling influence by financially strong groups. To carry out this public purpose, conduct prohibited under the chapter may be sanctioned through civil remedies under the chapter "in addition to any other remedies provided by law." RCW 42.17.390. We hold that chapter 42.17 RCW is not a specific statute that precludes prosecution under RCW 40.16.030 for conduct that is subject to the penalty provisions of both statutes. Thus, in the appropriate case, one remedy available to prosecuting authorities is prosecution under RCW 40.16.030. We reverse the trial court, reinstate the charges against the defendants, and remand for further proceedings consistent with this opinion.

AUTHOR:

Justice Barbara A. Madsen

WE CONCUR:

Chief Justice Gerry L. Alexander

Justice Susan Owens

Justice Mary E. Fairhurst

Justice James M. Johnson

Justice Bobbe J. Bridge

SANDERS, J. (dissenting) – John Conte, Frank Colacurcio, Jr., Frank Colacurcio, Sr., and Marsha Furfaro were charged with nine counts of violating RCW 40.16.030. Defendants allegedly reimbursed individuals for campaign contributions, thereby concealing the identity of the contributors and sources of the contributions. Because of defendants' alleged scheme, certain Seattle City Council members' election campaign committees filed false campaign finance reports.

Initiative 276 (I-276), overwhelmingly approved in 1972 by the people of Washington, specifically regulates and prohibits this precise conduct. *Seeber v. Pub. Disclosure Comm'n,* 96 Wn.2d 135, 138, 634 P.2d 303 (1981). Now codified at chapter 42.17 RCW, I-276 "provides a comprehensive financial reporting scheme for lobbyists, campaign committees, public officials and candidates." *Seeber,* 96 Wn.2d at 138. The people created the initiative for the "expressed purpose of fostering openness in their government"; its creation reflects our belief that the electorate "has the right to know of the sources and magnitude of financial and persuasional influences upon government." *Fritz v. Gorton,* 83 Wn.2d 275, 309, 517 P.2d 911 (1974). *See* RCW 42.17.010(2) ("[T]he people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.").

As the majority states, "[c]hapter 42.17 RCW includes two statutes that the defendants concede would be violated if

the State's allegations were proven and its theory of the law was correct." Majority at 7. Yet despite these two statutes specifically proscribing defendants' precise conduct and the State's concession that RCW 40.16.030 has *never before been applied to a campaign violation,* the majority holds chapter 42.17 RCW does not bar prosecution of defendants under RCW 40.16.030. I disagree as the public disclosure act (PDA), chapter 42.17 RCW, limits the State to civil recoveries.

1. The Plain Meaning of Chapter 42.17 RCW Limits the State to Civil Remedies

Our goal is to ascertain and implement the legislature's intent. *Dep't of Transp. v. State Employees' Ins. Bd.,* 97 Wn.2d 454, 458, 645 P.2d 1076 (1982). To determine legislative intent, "we begin with the statute's plain language and ordinary meaning." *Nat'l Elec. Contractors Ass'n v. Riveland,* 138 Wn.2d 9, 19, 978 P.2d 481 (1999). "If a statute is plain and unambiguous, its meaning must be primarily derived from the language itself." *Cockle v. Dep't of Labor & Indus.,* 142 Wn.2d 801, 807, 16 P.3d 583 (2001). "Plain language does not require construction." *Koenig v. City of Des Moines,* 158 Wn.2d 173, 181, 142 P.3d 162 (2006) (citing *State v. Thornton,* 119 Wn.2d 578, 580, 835 P.2d 216 (1992)).

As defendants correctly observe, the unambiguous language of chapter 42.17 RCW indicates the act's penalties are "complete, exclusive and non-criminal." Br. of Resp'ts at 12. The trial judge correctly determined chapter 42.17 RCW "constitute[s] a comprehensive statute providing for a series of prohibited acts and requirements on political candidates and contributors[;] . . . [the statute] treat[s] the entire subject area of political contributions to

local and state-wide campaigns." Transcript of Proceedings (Feb. 16, 2006) at 26. RCW 42.17.390 and .400 provide the act's "sole provisions regarding penalties and remedies" and neither authorizes the imposition of criminal sanctions. Br. of Resp'ts at 12. Chapter 42.17 RCW empowers and specifically limits state attorneys and county prosecutors to bring only "civil actions" for "civil remed[ies];" it provides:

> The attorney general and the prosecuting authorities of political subdivisions of this state may bring *civil* actions in the name of the state for any appropriate *civil* remedy, including but not limited to the special remedies provided in RCW 42.17.390.

RCW 42.17.400(1) (emphasis added).

"[A]*ny* appropriate *civil* remedy" should end our analysis as it explicitly limits the State to civil remedies. The "special remedies" provided in RCW 42.17.390 and the statute's reference to "any other remedies provided by law" (upon which the majority incorrectly fixates) is merely a subset of "any appropriate *civil* remedies." Contrary to the majority's belief, the clause "any other remedies provided by law" is *not* an invitation for the State to impose criminal sanctions.

2. RCW 40.16.030 Is Not Remedial

RCW 42.17.400(1) authorizes the State to bring "*civil* actions . . . for any appropriate *civil remedy*." (Emphasis added.) The "special remedies" provided in RCW 42.17.390 also limit enforcement options to *civil* remedies and sanctions. *See* RCW 42.17.390 ("[o]ne or more of the following *civil* remedies and sanctions may be imposed by

court order in addition to any other remedies provided by law" (emphasis added)). As stated above, the majority mistakenly emphasizes the phrase "*any other* remedies provided by law," believing it indicates "additional remedies can be of *any* kind, including criminal remedies." Majority at 12. But the majority fails to focus on the statute's reference to the word "*remedies.*" Because RCW 40.16.030 is neither civil nor remedial, it does not qualify as one of the intended "other remedies" cited by the statute. *See United States v. Hansen,* 249 U.S. App. D.C. 22, 772 F.2d 940, 946 (1985) (criminal sanctions are rarely described as "remedies").

RCW 42.17.390's language aptly reflects the predominantly remedial character of the legislation. *See* RCW 42.17.390(1) (providing for an election to be held void if the court finds a violation of this chapter probably affected the outcome of an election and stating, "[i]t is intended that this remedy be imposed freely . . . to protect the right of the electorate to an informed and knowledgeable vote"); RCW 42.17.390(2) (providing for a lobbyist's registration to be revoked or suspended should he violate this chapter); RCW 42.17.390(3) ("[a]ny person who violates any provisions of this chapter may be subject to a civil penalty"); RCW 42.17.390(6) (providing for injunctive relief). *See* 3 Norman J. Singer, Sutherland Statutory Construction § 60.02, at 152-53 (5th ed. 1992) ("Usually 'remedial' is used in connection with legislation which is not penal or criminal in nature, in that such laws do not impose criminal or other harsh penalties.").

By contrast, RCW 40.16.030 is punitive: "Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office . . . shall be punished by imprisonment

. . . or by a fine. . . ." Unlike civil statutes, which are considered remedial, criminal statutes are generally associated with punitive consequences.[1] *United States v. Ursery,* 518 U.S. 267, 277, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996). Because RCW 40.16.030's sanctions are punitive it is not a "civil remedy" contemplated by chapter 42.17 RCW and is therefore inapplicable to defendants.

3. The History of Chapter 42.17 RCW and the 1972 Voters Pamphlet Confirms the PDA Limits the State to Civil Remedies

Generally, only when the language of an initiative is ambiguous do we look to other extrinsic sources, such as the voters pamphlet, to determine electoral intent. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1,* 149 Wn.2d 660, 671, 72 P.3d 151 (2003). Since chapter 42.17's language unambiguously allows the State to seek only civil remedies, our analysis need not go further. However, even if the statutory language *was* ambiguous, the history of I-276 supports defendants' position. I-276's ballot title, explanatory comments, and the text of the initiative itself informed voters the act would provide only "civil penalties." Clerk's Papers (CP) at 46-47, 50-61, 68.

Importantly, the 1972 ballot included an alternative campaign finance law, Referendum Bill 25, described by its supporters as "a strict, realistic approach to the reporting and limiting of campaign contributions and expenditures."

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[1] Furthermore, RCW 42.17.400(5) states, "[i]f the violation is found to have been intentional, the amount of the judgment . . . may be trebled as punitive damages." Such a clause provides the extent of punitive sanctions available to the State and does not suggest the State may seek further punitive measures in other criminal statutes.

CP at 48. Referendum Bill 25 also proposed a comprehensive statutory scheme for regulating campaign contributions and expenditures, yet provided for "criminal penalties" instead of civil. CP at 48, 68 (voters were informed violators of Referendum Bill 25 "would be guilty of misdemeanors"). Voters were asked to compare and choose between the two competing measures in the 1972 election. By choosing I-276 over Referendum Bill 25, voters expressed specific intent to enact a comprehensive campaign finance law that provided exclusively for civil penalties.

Accordingly, I dissent.

AUTHOR:

Justice Richard B. Sanders

WE CONCUR:

Justice Tom Chambers

Justice Charles W. Johnson

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON	)	05-C-08807-5S
vs.	)	05-C-08808-3S
	)	05-C-08808-3S
JOHN CONTE, FRANCIS COLACURCIO, SR. FRANCIS COLACURCIO, JR., MARCIA MARIE FUFARO,	)	05-C-08810-5S
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

before the Honorable MICHAEL FOX, Judge,
presiding on February 16, 2006.

HEARING.

APPEARANCES:

For the State of Washington:	MARILYN BRENNEMAN, Esq. SCOTT PETERSON, Esq. JOHN CARVER, Esq.
For the Defendant Conte:	RICHARD HANSEN, Esq.
For the Defendant Colacurcio, Sr.	IRWIN SCHWARTZ, Esq.
For the Defendant Colacurcio, Jr.	JOHN WOLFE, Esq. ROBERT LEINBACH, Esq.
For the Defendant Fufaro:	ROBERT MAHLER, Esq.

REPORTED BY
J. Dan Lavielle, RPR
Official Court Reporter
State of Washington

[2] INDEX

WITS. DIRECT CROSS REDIRECT RECROSS VD

None.

EXHIBITS FOR IDENTIFICATION IN EVIDENCE

None.

[3] MR. LIENBACH: I have a handout for you for ease of referring to certain of the cases and the statutes.

As a brief introduction to all the motions, the genesis of these is essentially that there is a statute on the books, RCW 42.17, which governs the conduct prescribed and alleged by the government in this case and that there have been a number of times enforcement actions have been brought against people for violating 42.17. This is the first time that when conduct alleged in 42.17, that we're aware of, that the state is using 40.16 to prosecute the defendant's criminally.

With that background, that's sort of what the reason why we brought all these motions here today.

THE COURT: I'll ask you one question.

I know that a number of you practice in the Federal courts, you might have the information anecdotally or otherwise. I recall several years ago that there was a federal prosecution of an individual who had made contributions through other people to a city initiative campaign regarding district election of the Seattle city Council, I believe that was prosecuted in federal court.

Now, I think that was a plea and there is [4] nothing on it here but can you tell me where that came from? I

mean when I was looking at both of your arguments about the interplay between the civil and criminal statutes, that was the only thing that I could recall where there was a criminal prosecution of either the Seattle municipal Ordinances or the UCC and I just would be curious if there was – how that wound up in federal court and what statute was implicated there. I presume it wasn't the state statute.

MR. LEINBACH: I assume you're speaking of the Buckley case.

THE COURT: No, it's the Stewart case.

MR. WOLFE: My recollection is a little different about the factual predicate in the Stewart case in the courts.

In Stewart there were investigations, as I recall, relating to campaign contributions directed to a congressional candidate, councilman Peter Vonreichbauer (phonetic), as well as issues concerning campaign contributions that may have been governed by Title 40 that were local.

The prosecution in federal court and the guilty plea relating to Mr. Stewart involved the contributions made to Mr. Vonreichbauer, who I [5] represented. So I have some knowledge of this and it was not – while there was, I believe, a state investigation related to this, as well, that prosecution was predicated upon the federal elections campaign.

THE COURT: So didn't involve the Seattle City Council?

MR. WOLFE: No.

MR. LEINBACH: Apologize for being too green.

THE COURT: Goes back a few years.

MR. LEINBACH: Before I get into the substance of the first motion to dismiss, the state raised a procedural objection. I believe we dealt with that sufficiently in our brief showing the only issues before the court are issues of law.

If Your Honor has any concerns about that procedural argument, I'm happy to add –

THE COURT: No, go to the meat of the matter that is the repeal by implication versus the concurrent specific versus general rule.

MR. LEINBACH: There is no dispute between the parties that 42.17 prescribes the conduct alleged here. Look at the state's opposition brief, three of the pages of opposition is devoted to legislative history of 42.17, a lengthy discussion of that.

[6] The reason that we bring the motion to dismiss is because 42.17 contains a comprehensive and inclusive remedial scheme that does not permit the filing of criminal charges here.

Now, the real question for Your Honor today is what was the intent of the people in 1972 when they passed I-276 and the intent of the legislature when they subsequently amended it and left the penalty provisions at civilly only over a 30-year period of time, whether you look at the question in terms of a statutory interpretation analysis, whether you look at in terms of a general versus specific analysis or even a repeal by implication analysis, we believe the answer to that question is it was only

meant to be civil under all three of those analyses because all three of those doctrines are in place to do the same thing, which is to give effect to the intent of the people when they passed the legislation and not allow the state to usurp the powers of the people and pick and choose where they want to.

So taking a look first at a statutory interpretation analysis and looking at the clear language of the statute, itself, and in the package that I handed up it includes the relevant, at least what I submit are the relevant statutes related to the [7] penalty provisions of 42.17.

And you can see on the top 1.400, the attorney general and prosecuting authority of political substances division of this state may bring civil actions in the name of the state for any appropriate civil remedy. It's clear the legislature the people, when they passed initiatives, are giving the prosecution the ability to bring civil claims.

Now, any doubt about that you can look at the title .390 which innumerates the varying civil remedies and sanctions. See the title says Civil Remedies and sanctions.

And as Mr. Mahler pointed out in his brief, under the constitution the title has to relate to just one substantive law. And the differences where I can demonstrate this is in tab number six – actually the state brought this up, and that is they brought up the example of, hey, look, the SEC contains examples where there are civil and criminal penalties that go side-by-side. But if you look at the last page of that, in the RCW 21.20 related to securities act there is a section entitled criminal Punishment, chapter not exclusive, which says nothing in this chapter shall limit the power of the state to punish any person for any conduct that constitutes a crime.

[8] That is showing you an example of what – if the legislature intended for criminal penalties, that is the type of thing reported under a separate title that allows for criminal penalties.

Another section on the top page, 42.17.920, also shows you that the expressed language in the statute is meant to be civil only. That says in the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

So, in other words, the people and the legislature when they amended it, understood there may be potential conflicts, conflicts like in the penalty provision where someone might try impose criminal penalties like the state is doing here and the people clearly set out if there is a conflict, this statute governs, the civil penalties govern.

So I submit to you that under the statutory interpretation analysis where the first step is look at the clear language of the statute that it's dispositive, that the language is clear, it's not ambiguous, that it was meant to encompass the field related to violations under 42.17 and that it was meant to have civil remedies only.

So I would say you don't necessarily have to [9] look at the legislative history in this case, but if you do, I submit that the legislative history confirms that civil only was intended.

Tab two shows you the voter pamphlet – excuse me, tab one shows you the voter pamphlet of I-276 when it was passed in 1972. As we state in our brief, there was another initiative at the same time, R-25. Both of them dealt with the consequences of campaigns, campaign contributions

and public disclosure. In the title of 276 at the bottom says and providing civil penalties. At the bottom of the title –

THE COURT: I've read this material in the brief with regard to what is in the voter's pamphlet. Frankly, I'm not interested in that, I think this ought to be determined on the words of statute and the case law. Move to that.

MR. LEINBACH: Your Honor, the state basically throws out one section of the statute in order to try and defeat the fact that the words, itself, in the statute are clear and expressed and that is they say there is a clause in there that says any other remedies provided by law. Now –

THE COURT: What portion of the statute are you saying that the state is discarding or ruling out?

[10] MR. LEINBACH: I'm saying that the state is ignoring the fact when in conflict 42.17 governs but what they are saying is they are allowed to bring criminal prosecution because a part of the statute says that these civil remedies are available in addition to other remedies. That is the statute, that is the part of the statute they are citing.

Well, the court of Appeals has addressed this in Chrisman, and I tab that as number two. In Chrisman an individual sued the Pierce County Fire Department and said they violated some of the provisions of 42.17 and tried to bring a private civil cause of action under 42.17. The Court of Appeals said you can't do that.

And the same argument the state is making today, the Chrisman plaintiff stated. Chrisman, he contended that the statute expressly allows the court to impose civil

remedies and sanctions in addition to any other remedies provided by law. He said, this clause provided him with recovery for private tort action. The court rejected that and said we look at the statute and the statute is clear. It has all of the different civil things, it allows the prosecutor to bring a civil action only, it does not allow you to bring a private citizens right of action.

[11] So if the court of Appeals is saying we're not going to read into this a private civil remedy, then how can we write into it a felony criminal penalty, which has much greater consequences.

So I believe that the Court of Appeals has spoken to the issue and, secondarily, as we stated in our brief, in order to make sense of the provision any other remedies which occurs under the civil remedies, it only makes sense if it follows that it be civil.

THE COURT: Your primary argument here is with regard to the specific versus the general rule, as I understand it, and the applicability of statutes when one statute deals specifically with a certain type of violation and the other is a more general application and as has been pointed out over and over again in your memoranda from both the state and the defense, all of the case law in this state deals with two criminal statutes who are in that category and none of them deal with a criminal statute and a civil statute.

Now, that I think is the main thing that I'd like to hear from you more on about why the cases that you cite are applicable to a civil and criminal situation, as opposed to criminal, criminal and whether that doctrine still applies in that context. [12] And here, one of the things that, when I've gone over the statute, is clear that there

are punitive civil sanctions in the public disclosure act, as opposed to just remedies, for example, that someone pay back the cost of investigation or something like that.

Is there any distinction anywhere in the law with regard to a civil statute like that that does have punitive sanctions, as opposed to a civil statute that perhaps has remedies but not punitive sanctions?

MR. LEINBACH: I understand Your Honor's question.

Before I get into that exact answer, I'd like to reiterate the primary argument we're making is statutory interpretation, just reading the statute, itself, shows 42.17 is exclusive.

THE COURT: I understand the argument there.

MR. LEINBACH: I wanted to reiterate because the general versus specific argument is underneath that argument, I think that first argument is looming larger. But it's true, we were not able to find a situation whereby the general versus specific doctrine was used in a civil versus a criminal context but I think that the purpose of the rule is to give affect to the legislature's intent.

THE COURT: But in terms of the 30, 29, [13] whatever it is, 34 years since this legislation passed by initiative, there has never been a criminal prosecution under this statute for a violation of the type that is before us today, is that correct?

MR. LEINBACH: I am not aware of one. I think that speaks volumes to it.

The other couple of things that support that, I did not make a copy of this, I apologize, but the WAC 390-37-090 – I can hand this up. It talks about a settlement mechanism for when –

THE COURT: Did you provide this to the state?

MR. LEINBACH: I have not, I'm sorry.

THE COURT: This is with regard to the Washington Administrative Procedure Act, I presume.

MR. LEINBACH: In regards to enforcement actions under 42.17.

THE COURT: Okay, all right.

MR. LEINBACH: And what is interesting about it is it provides for a settlement mechanism whereby it asks defendants to go in, quickly resolve these, be creative, talks about be creative in settlement of these type of actions.

If the people are subject to criminal liability, then it basically renders this provision [14] moot because who is going to go in and quickly try and settle the civil when they are subject to criminal liability? I just think there are examples everywhere, the distinction between what is in the Washington Securities Act and what is here. The fact that the court of Appeals said you can't write something in that show that what was intended by the legislature, which is what the general versus specific is meant to do, basically what they are saying is you can't – prosecutor you can't choose, you have to go with what is stated.

And let's be honest, if 42.17 wasn't on the books, they would have no cause of action against the defendant. They

can't bring anything without the fact that 42.17 prescribes the exact conduct here at issue. They have to it have 42.17. What they are doing is saying we're going to choose these sections of 42.17 which we like and cite those to the court but we don't like the penalty provision so we're going to go over here in 40.16 and choose the penalty provisions over here, and they can't have it both ways and that's the underlying policy behind the general versus specific statute.

I'll touch on the repeal by implication doctrine because that's what the state relies on for [15] the majority of their case.

And I think that the appeal by implication doctrine actually weighs in our favor, as well. That's for three reasons. Two of the reasons are because again, as I've stated, I don't believe the repeal by implication doctrine really has application because the Hansen case which they rely on heavily, there are two things about the Hansen case which are different here. One is there is no where in the Hansen case that I could see that there is a similar provision of where there is a conflict we govern under 42.17.

THE COURT: That's the federal case, right?

MR. LEINBACH: Yes.

So that alone differentiates the results in Hansen.

But, secondly, Scalia, his whole argument was about there was this long legislative history where the senators knew that 1,001 in that case might have application to the Ethnics in Government Act, and they talked about it in legislative history they talk about whether or not it would

apply and they decided the only way we can pass it is be silent on it, get it through and cross our fingers.

That's very different from this case where we [16] have legislative history where the people actually rejected criminal penalties to apply.

And finally, the repeal implication doctrine says if they are clear and manifestly inconsistent, then we will say it's repealed by implication and here I submit that the penalty provisions are clear and manifestly inconsistent and I think if you look at – to me that's clear in both 42.17 but even more clear in the Seattle municipal code provision.

And remember, the state has brought – they say we filed false documents with the PDC and with the Seattle city clerk and so they are relying on the Seattle municipal Code provision for that and as you see at the top of my – the Seattle municipal code says violation of this shall constitute infraction not subject to the Seattle Criminal code.

So they were even more explicit, they said instead of putting in a in-case-of-conflict-we-govern, which is what 42.17 did, they said huh-uh, no criminal.

So even under the repeal by implication doctrine it is clearly inconsistent and, therefore, 42.17 governs.

THE COURT: Thank you.

MR. MAHLER: May I make a quick statement in [17] answer to the court's question about the fact that the specific versus general rule applies in criminal statutes typically, and the court pointed out, there are punitive sanctions here.

The one thing I wanted to point out to the court that the fact that punitive sanctions exist here doesn't rendered it a statute, that is somewhat akin to a criminal statute and the Supreme court recognized that in some of its double-jeopardy cases like Gore versus VFW so that where punitive sanctions do apply it can be treated in the light fashioned to a criminal statute.

So this is more like a criminal and a criminal statute than a statute that may only have, for example, injunctive relief or equitable relief.

THE COURT: Thank you, Mr. Mahler.

Mr. Carver?

MR. CARVER: I'd like to start off by talking about the overall statutory scheme that we have here.

I think from reading some of the pleadings here and hearing the arguments today, one might get the impression 42.17 and 40.16.030 present the conflict of overlapping morass of statutes that are impossible to disintangle and hopelessly confused. The I submit respectfully that's not the case.

[18] Instead I think what we have is a specific graduated system that increases in severity as the conduct gets more and more offensive. In other words, in 42.17, to use 42.17.390, I think what the defendants most emphasize, 42.17.390, subsection four, provides a civil penalty of $10 a day if you don't get your statements in on time, reports.

Subsection five of that same statute provides a civil penalty if you fail to report a contribution or expenditure you may be subject to a civil penalty equivalent to the amount you failed to report.

So those are civil penalties and you will notice there is no mens rea requirement in that at all. The legislature, in this case the people in its initiative, one campaign treasurers and other people that file these reports to be very carefully so its a strict liability standard. You leave out an expenditure, you may be dinged for the amount you failed to report.

THE COURT: There are other sanctions in the statute that allow considerably higher monetary sanctions, I think can be triple the amount or $10,000, whichever is higher, something like that, I can't remember the precise words for other types of violations as well. Right?

[19] MR. CARVER: I'm sure you are right, I'm not sure which provisions I was looking at .390 in particular.

But as I said, none of those civil statutes, none of those civil penalties in 42.17 require any kind of mens rea and none of them have to do with filing false reports and that's where the felony provisions of 40.16.030 kick in, when you knowingly, knowing it's false, you file a false report or cause someone else to file a false report. The reporting is key. That is the mechanism by which this information about campaign contributions and who is getting what money from whom, that's how it gets to the public and that is the backbone of both initiatives 276 and – and that's the reason I included alot of that legislative history, as well as – supreme court commentary.

The point is that's the thrust of what these were designed to protect, the public's right to know. And when you cross that line, when you knowingly file those false reports so the public gets false information about these

campaign contributions, that's the key. You crossed the line, you committed a crime, committed a class C felony.

That's what distinguishes 40.16.030 from all [20] the provisions in 42.17.

THE COURT: If that's the case, why, since we've had the PDC in place since 1973, 33 years, why is this the first criminal prosecution for this laundering situation? Because I presume not only the matters that have reached the paper with regard to this, that have been journalistically recorded, but I presume that the PDC has been taking enforcement action for all of those 33 years with regard to so-called laundered contributions and there has never been a criminal prosecution for it.

If that's the case, maybe there has been in some other county that I'm not aware of.

MR. CARVER: No reported decisions on that, in fact, there is very few recorded situations on 40.16.030 at all. I think Hansen, Sanders and Price which was the first one.

THE COURT: None of them deal with campaign-type violations?

MR. CARVER: Correct.

THE COURT: Fish tickets and stuff like that?

MR. CARVER: Child support orders, I believe, in Sanders so forth.

I really can't say why except to think – one reason I think is alot of times it is hard to find [21] these things, alot of this may happen and never get reported, notwithstanding the efforts of the elections board here in the city

of Seattle or the public disclosure section in Olympia. I think alot it probably never sees the light of day.

The second reason, I speculate, other than King county, I work in the fraud division, as to Miss Brenneman and Mr. Peterson, we see this all the time in other counties, they call us up when they have a fraud case, any kind of large-scale theft or fraud they call us, they don't have the experience or institutional expertise to deal with the cases, don't have the resources. You get outside of King county, maybe Pierce County, Snohomish County, Spokane County, very hard to have resources, and it's a matter of discretion, you figure I have other things to do, this is an elected prosecutor, I'll deal with this civilly and let the PDC, whatever county office deal with it, I think. I'm only speculating, I don't know the answer to that.

On the specific to general defense the defense is urging the court to adopt, I think we've already discussed the fact that there is no case, not in this state, not in any other state, not in any federal case where a court has held that a criminal [22] case and a civil case are concurrent, which is the basis for the specific versus general analysis, and of course leaving to the statutory interpretation the legislature obviously only intended to punish with this. There no case considered a criminal statute and civil statute concurrent as the defendants urge in this case.

Talking about Hansen, I submit, and I'm not going to go into the details in Hansen, I've know – read – discussed. Mr. Leinbach talks about the legislative history that then Circuit Judge Scalia went through in Hansen. I think it's clear whatever history he went through, he based it on the principal of repeal by implication in the face of the statute not only legislative history and, in fact,

Hansen, over a hundred congressmen signed a friend of the court brief led by Senator Hatch saying Ethnics in Government Act was not meant to apply to a prosecution under 18 USC 1001, false statement statute, basically the federal analog to 40.16.030.

Few more points here. The other point about repeal by implication is the conflict.

THE COURT: The what?

MR. CARVER: The conflict. The defense is urging that there's this – even under statutory [23] implication by repeal the court can avoid that principal by finding irreconcilable conflict between – I submit there is no conflict in 42.17.390 that statute begins by saying in addition to any other remedies provided by law. The defense says that limited to civil remedies not criminal remedies.

Even so, the point is it's not even exclusive as to civil remedies – how can it possibly be read as excluding any criminal penalties. In fact, as Circuit Judge Scalia said in Hansen – that same point was brought up because there is a statute in the federal election campaign – section – Title 2 of United States Code, Section 706 authorized the US attorney general to bring a civil action similar to – and the DC Court of Appeals concluded there is no difficulty in applying both 18 USC section 1001 – and to USC 706 and I submit the same thing should apply here.

There is no conflict between the long-standing statute pass in the 1909 – the defendants were warned and it's been on the books since then and the provisions of 42.17, that being the case there is no conflict. I think the provisions of repeal by implication should control here.

Also one more factor on that. As the Washington courts have said, if you got a repealer in [24] statutory scheme, as we do here in 42.17, you have a repealer that makes the disinclination to define repeal by implication even stronger. As I cited in the my response, there is a repealer, it repeals specific statutes in the Revised Code of Washington, does not repeal 40.16.030.

Under all those circumstances, I urge the court to deny the motion to dismiss.

THE COURT: Mr. Leinbach?

MR. LEINBACH: Of course, in I-276 it included the exact statutes that used to prescribe the public disclosure-type of actions and so it put those in as repealing. But it also went further and said in case of conflict, we govern. It couldn't throw out every other statute so it made the practical decision to say if there a conflict, we govern.

Quickly on Hansen, again. Two things. One is there no provision like that in the Hansen case and, two, Scalia, himself, said if the word "remedy" is used, remedy means additional civil remedies, it does not – he says it says in their case that they cite that remedies does not mean a criminal penalty or criminal sanction.

Finally, Your Honor, the state mentioned Price, and I'm glad they did, I'd forgotten to mention [25] it on my brief but Price, when it found that they could bring a cause of action like this under 40.16, the court specifically said we are not cited to any statute within the gaming code nor any regulations providing penalties for ticket violations. This appears to be the reason the state relies upon RCW 40.16 for charges on the steelhead ticket. That because

there wasn't anything else, the court said you can bring a 40.16 case.

Completely different here where there is something occupying the field and specifically covering the prescribed conduct in saying you can only do so civilly. I think Your Honor's question to Mr. Carver was the essence of this, why now, why is it that now the state is choosing to ignore the penalties provisions of 42.17 when it hasn't in the past and we believe, Your Honor, that they should have to and should bring civil penalties and civil enforcement action against the defendant so the public has the right to know.

THE COURT: I'll rule on the first motion now.

This matter comes before the court on a motion of the defense with regard to all the counts against all the defendants. I'm going to grant the [26] motion to dismiss in motion number one.

In 1973 the Public Disclosure Act was implemented after being passed in an initiative process in 1972, and the initiative basically constituted a comprehensive statute providing for a series of prohibited acts and requirements on political candidates and contributors, and established a reporting system through the public disclosure commission and also passed certain enforcement mechanisms within the statute that involved some compensatory remedies and some punitive sanctions. And as I said, the initiative was comprehensive and treated the entire subject area of political contributions to local and state-wide campaigns.

Now I think the specific versus general rule is a rule that applies here. Now, the interesting thing about this case is as far as I know, I think neither the prosecution or the state have pointed to any Appellate court decisions

that have dealt with the application of the specific versus general rule with regard to a criminal and a civil statute. As far as I know this is the first case that comes before a court that may well find its day into the Court of Appeals with regard to this subject. I think it's a very significant subject.

[27] Here I think it is significant that the initiative, itself, provides for punitive sanctions and it's of the nature of defining what in some other laws are called infractions and provides for sanctions that are essentially fines that may be imposed by the PDC and, of course, there's an appeal right by anybody aggrieved from the decision of the administrative agency to the court system.

Now, here I think that the – because of the comprehensive nature of the public disclosure law dealing with contributions and reporting and specifically with regard to the precise charges that are before this court, which is individuals reimbursing other individuals to make contributions to campaigns and then submitting information that these contributions are only being made in the name of the so-called pass through people. That is the specific subject that is dealt with very specifically in the statute and it is clear that it is prohibited, and it's prohibited in order to give meaning to the disclosure requirements that will let everybody see, through the public disclosure commission., who is contributing to what candidate and how much.

And all of that information now-a-days, 33 years after the passage of the act, is available [28] almost instantly to the public through the public disclosures systems Web site and the legislation accomplished its goal of transparency in campaigns.

Again, for the reasons that I've indicated, I do find that the general versus specific rule does apply in this case and in this circumstance it precludes the state from criminal prosecution under the statute originally passed in 1909, which is the subject matter of all of these counts against the defendants.

So I am going to dismiss on that ground and that ground alone.

Now, I will sign an order to that effect. I want to indicate to you I know that the general doctrine is that with regard to the remaining motions that generally if the court acts on one, it should not deal with the others. And I recognize that this is a clearly appealable issue by the state and, frankly, I think the trial court would be well served with some appellate instructions with regard to this novel issue, and I'm not going to rule on the other three grounds advanced by the defense, although I want to say on the record that my strong inclination, based on my reading of the memoranda that have been submitted, is that none of those other three motions have merit [29] and my inclination based on the memoranda was to deny those.

I'm not ruling on them and I recognize that for the purposes of the record that has no bearing on how the Court of Appeals may look on it, they would not review, I'm sure, the ones that I haven't ruled on.

Counsel, I'll sign an order to that effect. I'll hear from Miss Brenneman if you would like to make any points and.

MS. BRENNEMAN: Making a motion at this juncture the defense be ordered by the court to turn back to the state every shred of discovery pending the appellate

resolution of this matter. We do not want – we have a reason for that. I think it's important that we keep track of it, if we start over at some other time with new counsel that we have full sets to give instead of having to recoup it. None the factual bases on this case will impact their ability to deal with the appeal and some of the sensitive materials that were turned over including inquiry judge subpoenas and court orders of special inquiry judge, those should be in the possession of the prosecuting attorneys until were are scheduled for the, trial in this matter.

[30] THE COURT: When you talk about every shred of discovery, you have to understand I'm not aware of all the papers exchanged. I've been involved in some rulings, I'm not aware of the volume of the material you're talking about or the nature, let me –

MS. BRENNEMAN: I would be sensitive to the fact they may need time to do this and may separate out any materials that constitute –

THE COURT: Let me ask this because this is something I would ask Mr. Wolfe, anyway, so I might as well hear your comment on it now.

Normally when we have a situation like this, we deal with it with a protective order of some kind requiring that the materials be protected so that if there were copies retained, we would make sure they would not be distributed to persons not authorized to receive them inconsistent with the orders of court, and things like that, but still they would be kept together so that if, for example, this matter does go back to the trial court, that there would be a consolidated record.

Would a protective order be adequate for the prosecutor's interest? I presume they don't have the originals.

MS. BRENNEMAN: No, they have copies.

[31] Because the material is sensitive and because it deals with some very highly public materials and because life is uncertain, and while the best intentions of the people before this court I do not impugn in any way, shape, or form, they may not – by the time this thing goes through the appellate process, I'll be grayer, things can happen, and I've had occasion to have full sets of discovery for longer – offices get moved, I've lost material when other offices moved, it happens.

I think it's going to be more safe in our hands and we'll be in no position to complain if it happens in our hands and I would keep it sealed and keep it with the names of the attorneys on it and returned to them if we're successful in the Court of Appeals.

MR. WOLFE: Agree to a protective order. I maintain comprehensive files, I have closed files that are complete. My fee agreement advises clients that I maintain this material, depending upon the jurisdiction, for between three to five years after the conclusion of case and there is a reason for it, because if other litigation ensues, they need complete files.

Second, the suggestion that – the first [32] suggestion that they don't want it disseminated because of the IJ material, the IJ issued orders, authorized the dissemination of this material to a number of other entities, and to suggest that officers of the court can't be trusted to maintain the confidentiality of that when issued to other officers of the court or individuals who are not is preposterous,

there is no justification for it. I've never heard of such a procedure.

If the court wants us to shred it, we'll shred it and I'll file a certification to that extent. Then we can start all over with discovery, which is going to delay the start up of this case.

The way I work, I take notes, make comments in the margins, and I am not prepared to turn over work product, sealed or otherwise, to the state.

THE COURT: Does anybody on behalf of any of the other defendants want to be heard on this matter?

MR. HANSEN: Is the state asking we destroy our copies because we always keep the originals complete and make working copies, or does the state want the originals back?

MS. BRENNEMAN: I get a protective order for the working copies and get the originals back and have a full set in case Mr. Conte decides –

[33] MR. WOLFE: She has a full set.

THE COURT: Were the originals of these documents turned over to any of the defendants?

MS. BRENNEMAN: No.

MR. HANSEN: I meant the original copy.

MS. BRENNEMAN: Original copy is expensive and time-consuming and we have limited resources. If I have to make four more sets of copies, it will be an expense to the state. This case is expensive, it's not reasonable to the state to ask them back, these attorneys win the Lotto,

decide to retire or moving vans get lost or have a terrorist attack, I need to have a feeling that we have control of the material so it can be turned over, we can get on the with the case quickly.

THE COURT: I'm not going to rule on this today, I want to give you a chance to discuss whether a suitable protective order could be put in place and if you can't agree on this, then I'll rule on this motion and hear anything else you want to say.

But this wasn't contemplated today, I think people ought to have time to reflect on the issue and whether there are reasonable ways in which to protect what the prosecution has indicated but also protect the rights of defendant.

[34] Now, one thing that occurs to me and I'm sure occurs to you, as I said, I think an appeal here by the state is allowed and I think this is the type of case that can be reviewed, frankly, very quickly in the Court of Appeals because there is a limited record, there is no trial record here and I've ruled on strictly legal grounds.

So I would think that – and I think that there is a good argument that could be advanced by the state that this is a matter of significant public interest, that it might even be able to obtain accelerated review and with that in mind I think a protective order that would essentially seal all the documents that defense has in some way and provide for its safekeeping would be appropriate. I think there could be a protective order that could be crafted, we've done it in civil cases where the materials from each of these offices could be sealed and placed in a place that was secure and was not going to be moved by moving van or anything like that, and that the order could provide it

wouldn't be moved unless with court order and designate where it was to be kept. You can keep things like this in safe deposit box if you want to go to that extent.

But I'd like to give you all a chance, those [35] of you who are familiar with this case, to try to work something out that will protect all of your legitimate interests and if you can't resolve it within a week, the state is welcome to file a motion with the court and I'll hear from you again.

MS. BRENNEMAN: Thank you. we'll be able to work something out, hopefully. My colleague and I would like the court to rethink the idea, and I'll let Mr. Peterson address it, the other issues.

MR. PETERSON: I'm not sure if there is any objection, I think it would be – I'm Scott Peterson for the prosecutor's office. If we had rulings on each issue not necessarily today but in time to take them up on appeal and resolve them all at one time.

THE COURT: You know the problem that I have is that there is alot of case law that says that when – many of these arguments are constitutional and there is a long doctrine, well-established, that the court should not reach the constitutional question if it disposes of a case on non-constitutional grounds and I have not ruled on a constitutional issue under the state or Federal Constitution today.

MR. PETERSON: I believe that rule is designed for appellate courts so they are not unnecessarily reaching constitutional issues that wind [36] up in a published decision when it doesn't have to, be reached in a trial court's decision. If there are pending motions that can be resolved on appeal, I'm sure the court of Appeals appreciate this, too. If we take them all at once, we can resolve them all.

My thought is this: I understand you may have formed some thoughts after reading the briefs and considering them, how you would rule. You might not be the judge when we come back and another judge may decide one of the other issues they raise and one that has merit and might dismiss the case and have sequential appeals on all the issues. I hope that defense counsel, too, would like to have all the issues resolved at once.

My proposal is this: We could continue and have brief argument on them today, all agree, maybe let you decide them on the briefs. We could come back another day.

THE COURT: Why don't we take a brief recess and let me give you an opportunity to discuss this among counsel, see if you – because I think this is probably unanticipated. I think Mr. Peterson's suggestion is one that deserves attention and might well serve the interest of defense, as well as the state. But I want to give you a chance to think about [37] that and talk about it and see whether that's something you can agree on.

MR. WOLFE: Could I make a suggestion? I don't mean to belabor, I'm not sure all these attorneys are going to be able to huddle, the defense is going to want to huddle separately and discuss, work through the issues and try to get you an answer this morning.

What I would suggest is that the written order of dismissal that the court is indicated it will sign be delayed for ten days, that we try to work through those issues and if we can't, then the court, I guess, we'll come back on the 27th or 28th, if we can, and you can decide how we're going to proceed. But at this point the court dismissed it and indicated inclinations not to proceed, which I agree with but we haven't had a chance to think it through.

THE COURT: What about that Mr. Peterson?

MR. PETERSON: Sounds good. If we could choose a date now?

THE COURT: Go off the record.

(Off-the-record discussion)

THE COURT: We have discussed off the record scheduling with regard to the issues we just been discussing and we set Friday March 10, 9:30 in the [38] morning for this matter to be brought before the court.

Again, if the parties can reach agreement on this, although I'm conscious of the case law that I indicated and the general doctrine that I mentioned, I think it would be in potentially the interest of all concerned to have all the issues ruled on so there could be an appeal, for example, if the defense or prosecution wanted to take an appeal from any of the court's proposed ruling with regard to defense motions two, three, and four.

Thank you.

(Adjourned)

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[39] STATE OF WASHINGTON)
)
COUNTY OF KING)

I, James D. Lavielle, RPR, an Official Court Reporter for the Superior Court, County of King, State of Washington, hereby certify that the foregoing comprises a full, true and correct transcription of my stenographic notes taken in the above-entitled cause.

Dated this 17th day of February, 2006.

OFFICIAL COURT REPORTER

James D. Lavielle, RPR,
CSR 1991

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, Appellant, v. JOHN GILBERT CONTE; FRANK FRNCIS COLACURCIO, JR., FRANK FRANCIS COLACURCIO, SR., and MARSHA MARIE FURFARO, Respondents.	NO. 78995-9 **ORDER DENYING MOTION FOR RECONSIDERATION** (Filed Jun. 11, 2007)

The Court having considered the Motion for Reconsideration;

Now, therefore, it is hereby

ORDERED:

That Respondents' Motion for Reconsideration is denied.

DATED at Olympia, Washington this 11th day of June, 2007.

For the Court

/s/ Gerry L. Alexander
CHIEF JUSTICE

159 Wn.2d 797

Seattle Municipal Code

SMC 2.04.150 Intent of chapter - Interpretation - Construction.

A. It is the public policy of the City:

1. That political campaign contributions and expenditures be fully disclosed to the public and that secrecy in the sources and application of such contributions be avoided;

2. That the people have the right to expect from their elected representatives the utmost of integrity, honesty, and fairness in their dealings;

3. That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest;

4. That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people;

5. That public confidence in municipal government is essential and must be promoted by all possible means;

6. That public confidence in municipal government can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions;

7. That it is desirable to have legislation at the municipal level complementary to the concept of disclosure established in Initiative 276 (RCW Chapter 42.17);

8. That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions;

9. That the public's right to know of the financing of political campaigns far outweighs any right that this matter remain secret and private; and

10. That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of municipal government must be assured as a fundamental and necessary precondition to the sound governance of a free society.

B. The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns so as to assure continuing public confidence of fairness of elections, and so as to assure that the public interest will be fully protected. In promoting such complete disclosure, however, this chapter shall be enforced so as to ensure that the information disclosed will not be misused by arbitrary and capricious purposes and to ensure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed.

C. Further, it is the intent of the Council that this chapter be interpreted and applied consistent with the de minimus maxim, that inadvertent minor violations of this chapter may be corrected and cured without full hearing in a manner consistent with the spirit and intent of this chapter.

Seattle Municipal Code

SMC 2.04.290 Identification of contributions and communications.

A. No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

B. 1. All audio and video broadcast political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. All other political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. Political advertising paid for by someone other than an agent of the committee that benefits from the advertising, i.e., in-kind contributions, must state "paid for by . . . " followed by the name and address of the person who paid for the advertising, and "sponsored by" followed by the name and address of the committee(s) that will benefit from the advertising. The use of an assumed name shall be unlawful.

2. In addition to the materials required by subsection B1 of this section, all political advertising undertaken as an independent expenditure by a person or entity, other than a bona fide political party as defined in RCW 42.17.020(5), must include the following statement on the communication "NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state)." If the advertisement undertaken as an independent expenditure is undertaken by a nonindividual, other than a bona fide political party as defined in RCW 42.17.020(5), then

the following notation must also be included: "Top Five Contributors," followed by a listing of the names of the five persons or entities who or which, during the twelve (12)-month period before the date of the advertisement, made to the sponsor of the advertisement the largest contributions reportable under this chapter.

3. The statements and listings of contributors required by subsections B1 and B2 of this section shall:

a. Appear on the first page or fold of the written communication in at least ten (10)-point type, or in type at least ten (10) percent of the largest size type used in a written communication directed at more than one (1) voter, such as a billboard or poster, whichever is larger;

b. Not be subject to the half-tone or screening process;

c. Be set apart from any other printed matter; and

d. Be clearly spoken on any broadcast advertisement.

Seattle Municipal Code

SMC 2.04.370 Mandatory limitations on contributions.

A. No person shall make a contribution to any candidate for Mayor, member of the City Council, or City Attorney of the City, except in the election cycle for that candidate as defined in Section 2.04.010(7).

B. No person shall contribute more than Six Hundred Dollars ($600) to any candidate for Mayor, member of the City Council, or City Attorney of the city, in any election cycle.

C. A candidate for Mayor, member of the City Council, or City Attorney of the City, may only accept or receive a campaign contribution during an election cycle as defined in Section 2.04.010(7).

D. No candidate for Mayor, member of the City Council or City Attorney of the City shall solicit or receive campaign contributions of more than Six Hundred Dollars ($600) from any person in any election cycle; provided:

1. a. The limitations imposed by this section shall not apply to a candidate's contributions of his or her own resources to his or her own campaign, or contributions to the candidate's campaign by the candidate or the candidate's spouse of assets of their marital community;

b. The limitations imposed by this section apply to contributions of the candidate's spouse's separate property;

2. The limitations imposed by this section shall not apply to independent expenditures as defined by this chapter; and

3. The limitations imposed by this section shall not apply to the value of in-kind labor; and

4. The limitations imposed by this section shall not apply to contributions consisting of the rendering of clerical or computer services on behalf of a candidate or an authorized political committee, to the extent that the services are for the purpose of ensuring compliance with City, county, or state election or public disclosure laws.

E. Adjustment Index.

1. In March of each even-numbered calendar year, the Commission shall promulgate a rule in accordance with

Chapter 3.02 of the Seattle Municipal Code. This Rule may increase the dollar amount in subsection A based on changes in economic conditions as reflected by the Implicit Price Deflator of the United States Domestic Product as published by the United States Department of Commerce Bureau of Economic Analysis (IPD). If application of the IPD would result in a decrease in the dollar amount, the dollar amount shall remain unchanged.

2. The new dollar amounts established by the Commission shall be determined by multiplying the base amount provided in this section (Six Hundred Dollars $600)) by the percentage change in the most recently published IPD since January 1, 2000. The resulting amount shall be added to the amount derived from the multiplication of the base amount, and the amount resulting from that calculation shall be rounded to the nearest whole dollar amount that can be divided by fifty (50). In cases where the unrounded amount derived from this procedure is exactly Twenty-five Dollars ($25) different from the two (2) nearest numbers evenly divisible by Fifty Dollars ($50), the amount shall be rounded up to the next number evenly divisible by Fifty Dollars ($50). The new dollar amount shall become effective May 1st of the even-numbered calendar year. Once adopted, any increase in the contribution limit shall be effective for all election cycles that have not ended by May 1st of that even-numbered year.

3. This subsection shall expire six (6) years after the effective date of the enabling ordinance.[1]

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[1] Editor's Note: Ordinance 120321 was passed by the City Council April 9, 2001.

Seattle Municipal Code

SMC 2.04.500 Civil remedies and sanctions.

A. 1. Upon determining pursuant to Sections 2.04.070 through 2.04.090 that a violation has occurred, the Commission may issue an order requiring the party to take particular action in order to comply with the law, and in addition, or alternatively, may impose sanctions up to Five Thousand Dollars ($5,000) for each violation.

2. Upon determining that a contribution was illegally made or accepted, in addition to the remedies in subsection A.1, the Commission may order the return of a contribution illegally made, and impose a penalty of two (2) times the amount of a contribution illegally made or accepted by a person who violates Section 2.04.180, 2.04.200, 2.04.210, 2.04.215, 2.04.240, 2.04.290, 2.04.300, 2.04.370, or 2.04.480.

3. Upon determining that a report was filed excessively late, in addition to the remedies in subsection A1, the Commission may impose a penalty of two (2) times the amount of each deposit or expenditure for each deposit or expenditure that was reported excessively late. A report is excessively late if it was due more than twenty-one (21) days before the election in which the candidate or ballot proposition appeared on the ballot, but was not filed at least twenty-one (21) days before that election. A report is also excessively late if it was due within twenty-one (21) days before the election in which the candidate or ballot proposition appeared on the ballot, but was not timely filed.

4. In addition to the actions in subsections A1, A2, and A3 above, the Commission may forward the determination

of violation to the Seattle City Attorney or the King County Prosecutor for prosecution. If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of the election may be held void and a special election held within sixty (60) days of such finding. Any action to void an election shall be commenced within one (1) year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

B. Whether or not there is an administrative determination as provided in subsection A, the violation or failure to comply with the provisions of Sections 2.04.160 through 2.04.290 (regarding campaign reporting), Section 2.04.370 (regarding contribution limitations) or Section 2.04.310 of this chapter (regarding political signs) shall constitute an infraction, not subject to the Seattle Criminal Code, for which a monetary fine, not to exceed Five Thousand Dollars ($5,000), may be assessed by a court, however, a person or entity who violates Section 2.04.370 may be subject to a civil fine of Five Thousand Dollars ($5,000) or be required to return the illegal contribution and pay a penalty of two (2) times the amount of the contribution illegally made or accepted, whichever is greater. Violation of the ordinance and existence of an infraction may be proven by a preponderance of the evidence and need not be proven beyond a reasonable doubt. An action seeking to establish the fact of an infraction and imposition of a monetary fine under this section may be commenced by the City Attorney at a request of a majority of the Commission.

C. Any candidate who fails to comply with the requirements of Chapter 2.04 of the Seattle Municipal Code or conditions of his/her campaign contract shall be ineligible to receive further such funds until in compliance. Any candidate who exceeds the expenditure limitation for which he/she has contracted shall immediately return to the appropriate City account Three Dollars ($3) for every One Dollar ($1) he/she has overspent in that election to a maximum amount equal to the total sum of public funds he/she has received.

D. The following persons shall be liable for violation of this chapter, and shall be subject to all penalties, civil remedies and sanctions set forth in this section, in Section 2.04.330, or elsewhere in this chapter:

1. Each candidate whose campaign has violated any provision of this chapter;

2. Each officer of a ballot proposition political committee or continuing political committee whose committee has violated any provision of this chapter;

3. Each individual violating any provision of this chapter.

RCWA 40.16.030. Offering false instrument for filing or record

Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

RCWA 42.17.080. Reporting of contributions and expenditures – Inspection of accounts

(1) On the day the treasurer is designated, each candidate or political committee shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the treasurer resides, in addition to any statement of organization required under RCW 42.17.040 or 42.17.050, a report of all contributions received and expenditures made prior to that date, if any.

(2) At the following intervals each treasurer shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the committee maintains its office or headquarters, and if there is no office or headquarters then in the county in which the treasurer resides, a report containing the information required by RCW 42.17.090:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed under this section: PROVIDED, That such report shall only be filed if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

When there is no outstanding debt or obligation, and the campaign fund is closed, and the campaign is concluded in all respects, and in the case of a political committee, the committee has ceased to function and has dissolved, the treasurer shall file a final report. Upon submitting a final report, the duties of the treasurer shall cease and there shall be no obligation to make any further reports.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of the fifth business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of the one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date on which the special election is

held, or for the period beginning the first day of the fifth month before the date on which the general election is held, and ending on the date of that special or general election, each Monday the treasurer shall file with the commission and the appropriate county elections officer a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds so deposited and the amount contributed by each person. However, contributions of no more than twenty-five dollars in the aggregate from any one person may be deposited without identifying the contributor. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

(4) If a city requires that candidates or committees for city offices file reports with a city agency, the candidate or treasurer so filing need not also file the report with the county auditor or elections officer.

(5) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17.040, the books of account must be open for public inspection by appointment at the designated place for inspections between 8:00 a.m. and 8:00 p.m. on any day from the eighth day immediately before the election through the day immediately before the election, other

than Satur Sunday, or a legal holiday. It is a violation of this chap for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days. The appointment must be allowed at an authorized time and day for such inspections that is within twenty-four hours of the time and day that is requested for the inspection.

(6) The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(7) All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(8) Copies of all reports filed pursuant to this section shall be readily available for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to RCW 42.17.040, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission.

(9) After January 1, 2002, a report that is filed with the commission electronically need not also be filed with the county auditor or elections officer.

(10) The commission shall adopt administrative rules establishing requirements for filer participation in any

system designed and implemented by the commission for the electronic filing of reports.

RCWA 42.17.120. Identification of contributions and communications

No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

RCWA 42.17.390. Civil remedies and sanctions

One or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(1) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of said election may be held void and a special election held within sixty days of such finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(2) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his or her registration may be revoked or suspended and he or she may be enjoined from receiving compensation or making expenditures for lobbying: PROVIDED, HOWEVER, That

imposition of such sanction shall not excuse said lobbyist from filing statements and reports required by this chapter.

(3) Any person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each such violation. However, a person or entity who violates RCW 42.17.640 may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

(4) Any person who fails to file a properly completed statement or report within the time required by this chapter may be subject to a civil penalty of ten dollars per day for each day each such delinquency continues.

(5) Any person who fails to report a contribution or expenditure as required by this chapter may be subject to a civil penalty equivalent to the amount not reported as required.

(6) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

RCWA 42.17.780. Reimbursement for contributions

A person may not, directly or indirectly, reimburse another person for a contribution to a candidate for public office, political committee, or political party.